



# **Washington State Transportation Commission**

## **Best Practices Review of Washington State Public Private Partnership Programs and Laws for Non-Toll Facility Projects**

**Presented to Governor Gregoire and the Washington State Legislature  
January, 2011**



STATE OF WASHINGTON  
TRANSPORTATION COMMISSION

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January 25, 2011

The Honorable Christine Gregoire  
Office of the Governor  
PO Box 40002  
Olympia, WA 98504-0002

The Honorable Members  
Senate Transportation Committee  
PO Box 40482  
Olympia, WA 98504-0482

The Honorable Members  
House Transportation Committee  
PO Box 40600  
Olympia, WA 98504-0600

Dear Governor Gregoire, Senators and Representatives:

The Washington State Transportation Commission is pleased to submit this report on our Best Practices Review of Washington State Public Private Partnership Programs (P3's) and Laws for Non-Toll Facility Projects. The Commission was directed to work with the Department of Transportation's Economic Partnerships Program in conducting this review so that P3 policies and procedures appropriate for application in Washington State could be identified (*ESSB 6381, Section 205, (7)*).

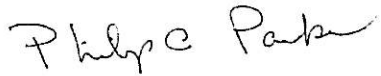
It seems we have reached a point in our state's history in which further consideration must be given to identifying non-traditional ways of delivering state services and meeting infrastructure needs. Now more than ever, our public institutions need new resources to meet growing transportation demands. P3's allow the skills and assets of both the public and private sectors to be shared to deliver transportation facilities and services for the public's benefit. This is achieved by contractually allocating the project's risk and rewards to each of the partners, drawing upon each sector's inherent strengths and best attributes.



The Honorable Christine Gregoire  
The Honorable Members, Senate Transportation Committee  
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We hope this report will further illuminate P3 possibilities and opportunities and provide a basis for further debate and discussion as you work towards identifying future approaches to addressing statewide transportation needs.

Sincerely,

A handwritten signature in cursive script that reads "Philip Parker". The signature is written in dark ink and is positioned above the printed name.

Philip Parker, Chairman  
Washington State Transportation Commission

# **Report of the Washington State Transportation Commission**

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## Introduction

Now more than ever, our public institutions need new resources to meet the demand for important transportation infrastructure and services. Public/private partnerships (P3's) allow the skills and assets of both the public and private sectors to be shared to deliver these facilities and services for the public's benefit. This is achieved by contractually allocating the project's risks and rewards to each of the partners, drawing upon each sector's inherent strengths and best attributes.

Opportunities for P3's exist within our own state transportation system. The state currently holds assets that could be leveraged for greater public benefit. For example, ferry terminal buildings and property located along valuable waterfront could be jointly developed with a private partner to provide better public amenities while contributing to the cost of the public works project. Another example is parcels of land originally acquired as highway right-of-way remain fallow, with no current or planned highway use. These orphaned parcels could be jointly developed or traded with other public or private agencies, allow the land to be used productively while garnering resources for the state. There are other examples as well, with the point being that in each of these instances, a public/private partnership could be employed to capitalize on existing assets owned by the state, resulting in better public amenities, and project cost reductions or even generation of modest amounts of revenue.

The Washington State Transportation Commission is statutorily responsible for reviewing and approving public-private partnership agreements developed under the Transportation Innovative Partnership (TIP) Program, found in chapter 47.29 RCW (Appendix A). The Commission is also charged with adopting administrative rules to carry out the TIP program. The TIP administrative rules were formally adopted by the Commission in December, 2006 as WAC 468-600 (Appendix B).

Washington State law, and the WAC rules that accompany it, were primarily aimed at guiding the development, review and approval process for public-private partnership projects that are substantially funded with toll revenues. Although the statute and rules allow for a wide range of infrastructure projects beyond toll facilities, the procedures for developing and reviewing non-toll projects are inefficient, costly and in some instances, irrelevant.

In 2010, WSDOT's Transportation Partnerships Office initiated a procurement process for three different public private partnership projects<sup>1</sup>. Two of these projects (related to partnerships for ferry terminal joint development), would have been candidates for development under the TIP process. However, because the laws and rules governing that process are ill-suited for non-toll projects, WSDOT decided to undertake these projects under its other statutory powers for developing transportation projects and entering contracts.

Recognizing that the original enabling legislation (RCW 47.29) is burdensome for the development of non-toll facility public private partnerships, the Washington State Legislature

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<sup>1</sup> These included the West Coast Green Highway I-5 Electrification project; joint development at the Edmonds Ferry Terminal; and joint development at the Anacortes Ferry Terminal (RFP expected in January, 2011).

directed the Transportation Commission to undertake a review of the law and rules that govern the TIP program and make recommendations for statutory process and program improvements<sup>2</sup>.

### **Study Purpose**

This study attempts to identify procedural provisions within RCW 47.29 that could be improved to better facilitate public-private partnerships for non-toll road projects. The breadth and depth of this report has been tailored to fit within the available time and staffing resources.

### **Basic Approach**

WSDOT's Transportation Partnerships Office assisted the Transportation Commission with the review of the laws and rules governing Washington State's Transportation Innovative Partnership (TIP) Program. This work included research and review of the programs and best practices currently in use by other government agencies in Washington State that have experience and success in non-toll road public-private partnership projects. Based on the results of this work, the Transportation Commission is making recommendations for statutory (and some programmatic) changes related to public-private partnerships for these non-toll road projects.

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<sup>2</sup> See: Sec. 205(7), Chapter 247, Laws of 2010.

## **Executive Summary of Recommendations**

The Commission's recommendations are described in more detail in the body of this report beginning on page 19. In summary, the Commission recommends the following:

1. Amend RCW 47.29 to provide different selection criteria, project development tools, review processes and final approvals for non-toll projects. Laws related to development of toll facilities would remain unchanged.
2. Require Transportation Commission oversight of PPP projects that would permanently dispose of state land or assets (through sale or exchange), and for PPP projects that could significantly bind future legislative appropriations (such as lease payments, assumption of long-term maintenance responsibilities, etc.).
3. Streamline the project review and approval process for non-toll PPP's by: giving the Commission discretion in whether to create Expert Review Panels; consolidating project development, review and approval among two agencies instead of the current six; no longer requiring potential projects to be published in a registry before they can be developed; and removing requirements that projects be listed in local or state transportation plans to be eligible for PPP development.
4. Subject to the oversight, review and approval of the Transportation Commission, the WSDOT should be authorized to carry out a pilot project allowing experimental use of innovative project delivery and contracting techniques for a small number of PPP projects.

## Section 1: Public-Private Partnership Laws and Programs in Washington State

### Chronology of Public Private Partnerships

In 1993, Washington State enacted HB 1006 (codified as RCW 47.46), the Public-Private Initiatives in Transportation Act (PPIT, or better known as PPI). Washington was among the first states in the nation to pass such a law, along with Virginia and California. A new office was created within WSDOT to implement the law, and the Washington Transportation Commission was directed to oversee and approve all project agreements developed under the PPI program.

For reasons well documented in past reports<sup>3</sup> on this subject, only one project was constructed under the PPI program, the Tacoma Narrows Bridge toll facility. By the time the Tacoma Narrows Bridge was opened to traffic, several changes to the contract, the financing structure and even the approval process (all these changes required legislative approval) were made. In the end, the project was delivered and considered a success.

As part of the final legislative package approving the Tacoma Narrows Bridge project, the Legislature directed the Legislative Transportation Committee to conduct a study of barriers to public-private partnerships in Washington State. The focus of the Legislature and the resulting study was on barriers to delivering PPP *toll road* projects rather than looking more broadly at all potential projects.

As a result of this study, and as part of a legislative package of bills required to gain approval for an increase in the state gas tax, the Transportation Innovative Partnerships Act of 2005 was enacted (codified as Chapter 47.29 RCW). This law phased out the prior PPI Act that had resulted in the delivery of the Tacoma Narrows Bridge. This new law allowed transportation-related projects and programs of all modes to be eligible for development as a public private partnership under a new Transportation Innovative Partnership program (TIP).

The TIP program is currently administered by WSDOT's Transportation Partnerships Office, but certain aspects of the TIP program are overseen by the Washington State Transportation Commission. Much like the original PPI law, the Commission retained final approval authority for any TIP project agreements negotiated between WSDOT and a private partner. The Commission was directed to enact administrative rules to carry out the TIP program, but with direction that the rules must incorporate certain provisions, ones that are very specifically aimed at toll roads.

In 2006 the Washington Transportation Commission formally adopted administrative rules for the Transportation Innovative Partnership Program. The program rules can be found in Appendix B as WAC 468-600.

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<sup>3</sup> C.f., Washington State Transportation Commission's 2006 Report on the Transportation Innovative Partnership Program, page 9.

## **Key Differences between the 1993 Public Private Initiatives in Transportation Act (PPI) and the 2005 Transportation Innovative Partnerships Act (TIP)**

The 2005 law (codified as Chapter 47.29 RCW) is different from the original 1993 PPI law in several respects. Some key differences:

The 2005 TIP law

- Allows transportation-related projects and programs of all modes to be eligible for development as a public private partnership under the Transportation Innovative Partnership (TIP) program;
- Requires WSDOT to assess potential projects and, for those that demonstrate basic feasibility, publish a registry of projects that the state intends to develop as public-private partnerships;
- For transportation projects funded with toll revenues, any bonded indebtedness must be state-issued debt;
- Citizen advisory committees must be convened for projects that cost in excess of \$300 million, and a statutorily-prescribed evaluation panel and an expert review panel must be convened for all projects.

### **Transportation Commission's Role under RCW 47.29 (TIP Program)**

As part of Washington State's transportation governance reform, the Transportation Commission's role in overseeing WSDOT was reorganized, giving this power directly to the Governor by making WSDOT a cabinet agency. However, the Commission retained its authority to oversee certain aspects of project development under the TIP program. More specifically, the Commission is responsible for

- Creating the administrative rules for how the TIP program will be administered;
- Ensuring that the competitive process for receiving, scoring, and selecting proposals complies with all rules and regulations;
- Establishing expert review panels where warranted (such as high-cost projects);
- Reviewing the terms of any proposed contracts and partnership agreements to insure that the state's interest has been protected; and ultimately
- Approving or rejecting negotiated agreements.

For additional details on the scope of the Commission's roles and responsibilities, see Appendix C.

### **Public Private Partnerships at WSDOT**

It is important to note that "partnerships" between WSDOT and the private sector are evident throughout the agency, and in high numbers, without an external process of review and approval. Construed broadly, the term "partnerships" includes the relationship the agency has with private firms that provide project management, engineering, design, consulting and many other

functions. Recent estimates show that 74% of WSDOT's highway construction work is contracted out to the private sector.

For the more narrow purposes of this report, "partnerships" are construed as non-toll road projects or services that WSDOT seeks to deliver in conjunction with the private sector and/or other agencies that are discretionary, but provide greater benefits to the public than if not undertaken at all. For example, a partnership to redevelop a ferry terminal with a private partner might be discretionary in that the basic rehabilitation needs could be met without private participation, but the benefits to the public that could be gained through a partnership (enhanced amenities, or financial contribution to the project) are greater than what WSDOT could achieve acting strictly on its own. This construct is useful to segregate the types of projects and activities that tend to fall under WSDOT's Transportation Partnerships Office, from those projects and activities that occur on a regular basis and are part and parcel of WSDOT's project and program delivery (e.g. ferry vessel construction or roadway improvements).

### **WSDOT's Transportation Partnerships Office**

#### **Mission**

WSDOT's Transportation Partnerships Office is the agency's focal point for engaging the private sector in unique public private partnerships that can help advance important transportation projects, programs, or policies. The Office seeks to combine or realign the traditional roles of business and government in ways that result in projects that exceed what the parties could achieve if acting strictly within their traditional roles. For more detailed information about the role of the Partnerships Office, see Appendix D.

#### **Organizational Resources**

The Transportation Partnerships Office is the smallest budgeted program (Program K) within WSDOT, with a two-year budget of approximately \$525,000 to fund professional staff and all program activities.

The Office carries out its activities under the Strategic Planning and Finance (SPF) Division of WSDOT. The SPF Division is overseen by the Chief Financial Officer for the agency, who in turn reports directly to the Secretary of Transportation. See Appendix E, WSDOT Table of Organization.

Because of its very modest budget, the Transportation Partnerships Office relies on short-term, limited engagements with private consultants and contractors to conduct specialized research and due diligence on potential projects. Access to these specialists is limited to available funding earmarked for this purpose.

**WSDOT Responsibilities for TIP Program** A key responsibility of the Transportation Partnerships Office is to carry out the administrative functions and responsibilities of the TIP program. These tasks are more fully described in the TIP administrative rules, but generally include:

- Preliminary research and development of potential public private partnership projects;



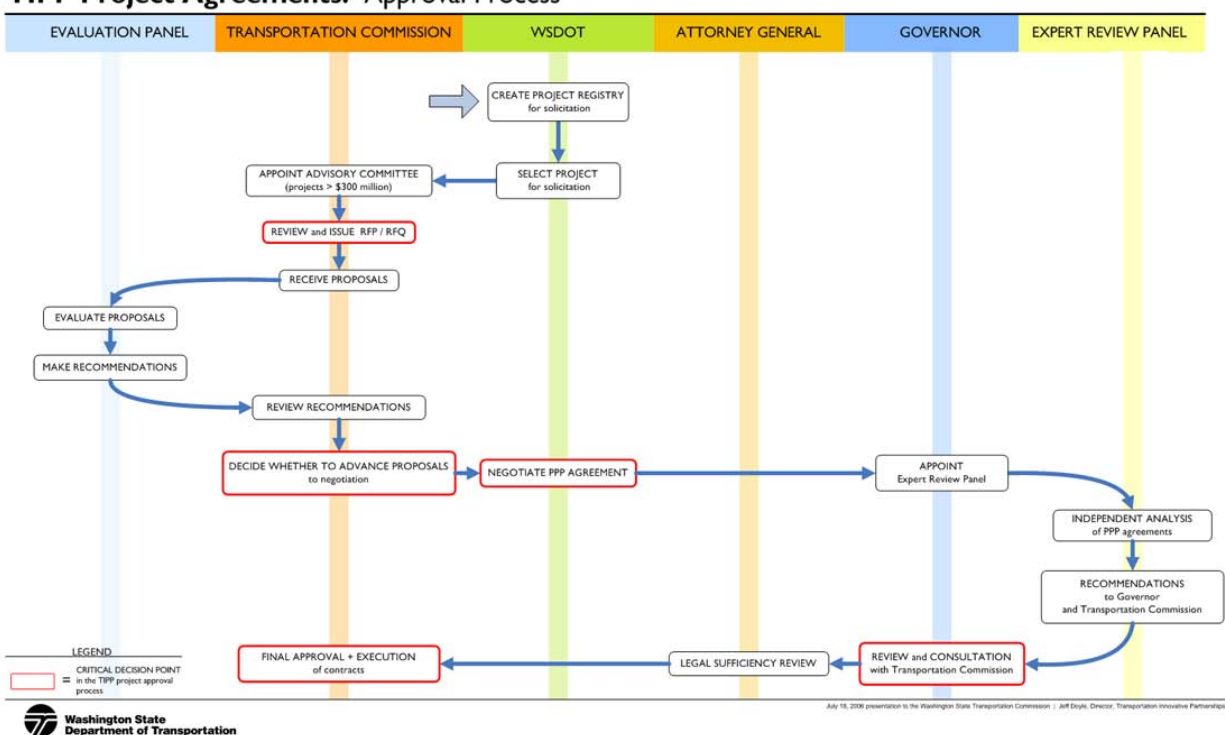
- Selection of projects that WSDOT believes are good candidates for development (“solicited” projects, to be published in the TIP Program project registry);
- Preparation of required legal notices and solicitation documents to be issued after review and approval by the Commission;
- Participation in reviewing proposals for feasibility; negotiating the terms of proposals and necessary agreements;
- Public involvement and community outreach; and
- Technical support during the Commission’s review and deliberations.

## Section 2: Project Development Factors and Recent Experience

Whether a public private partnership project is best developed under the TIP Program or under other statutory authority depends on the size, nature and scope of the project and other laws, rules, and executive orders that could affect it. Such a determination is made by WSDOT after evaluating the proposed project, the need for timeliness in review and approval processes, and whether the statutory criteria applicable to TIP projects (in RCW 47.29) are appropriate given the nature of the proposed project.

The TIP Program's project review and approval process is depicted in the following flow chart (see also Appendix F):

**TIPP Project Agreements: Approval Process**



Since the TIP rules were created in 2007, no projects – toll or otherwise – have been formally proposed for development using that process. In many instances, WSDOT has relied upon other legal authority to pursue agreements with other public or private partners to develop transportation projects. Some recent examples of public private partnerships developed under other statutory powers include land leases with cellular phone companies, management of for-pay parking facilities, electric vehicle charging stations, and retail restaurant and other commercial enterprises at ferry terminals<sup>4</sup>.

<sup>4</sup> For current information on active public/private partnership projects at WSDOT, see [www.wsdot.wa.gov/funding/partners/default.htm](http://www.wsdot.wa.gov/funding/partners/default.htm)

WSDOT asserts that many of the requirements in both RCW 47.29 and the resulting WACs are too narrowly tailored and are relevant only for toll facility projects. Although that law allows projects of all modes and sources of funding, the review and approval process is unnecessarily burdensome for smaller, non-toll road projects and therefore should be developed under WSDOT's other authorities and powers.

WSDOT also contends that since transportation governance reform has placed the agency under the direct supervision of the executive branch as an official cabinet agency, it is no longer appropriate for the Transportation Commission to have a formal role in selecting, developing and approving transportation-related projects and services provided by WSDOT. This is an additional reason cited by the Department why it has not proposed to develop public private partnership projects pursuant to the TIP process.

### **Case Study: Edmonds Terminal Public Private Partnership**

WSDOT's recent solicitation for a public-private partnership near the Edmonds Ferry Terminal provides a point of reference to better understand the issues the state faces when determining whether to develop a public-private partnership project under RCW 47.29, or under other laws and powers that are not specific to partnership projects but are nonetheless available.

#### **Background**

In 2008, the WSDOT Transportation Partnerships Office conducted a financial feasibility analysis of public-private partnership projects at three Washington State Ferries terminals. Bainbridge, Colman Dock and Edmonds showed the most potential for public-private partnership development. Importantly, the analysis showed that an increase in zoning height limits was likely necessary for an Edmonds partnership project to generate a sufficient return on investment for a developer.

#### **Factors in Decision not to use TIP process**

Below are the important factors that lead to WSDOT's decision to pursue a partnership project outside of the TIP process:

1. Pursuit of this project was legislatively directed<sup>5</sup>; the requirement that TIP projects originate from a published registry of desired projects would have been moot, and therefore a waste of resources.
2. As required in RCW 47.29, the TIP program has specific, detailed criteria that all projects must be measured against; many of the criteria that proposals are required to contain are completely irrelevant for non-toll facility projects.
3. The requirements for multiple review panels – in addition to the Transportation Commission – would have been far too time consuming and costly, especially for a project with an estimated value of only \$1-2 million.

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<sup>5</sup> See Appendix I, budget proviso from ESSB 6381, Supplemental Transportation budget.

4. The requirement that both the Governor's Office and the Transportation Commission receive, review and approve any final project is redundant, since WSDOT is now a cabinet agency and therefore an agent-in-fact of the Governor.
5. The unique nature of the project – essentially trading a WSDOT-owned income producing property in exchange for an undefined pedestrian improvement – would have required the Transportation Commission and each of the expert review panels to make guesses about how WSDOT might use and value such a proposed facility—a facility that wasn't proposed by WSDOT nor on its list of planned capital improvements at the terminal.

WSDOT undertook solicitation of a public-private partnership involving the property across from the Edmonds Terminal under its other statutory powers: RCW 47.20.785, which allows WSDOT to undertake small-scale design/build projects on an experimental basis; and RCW 47.12, which allows WSDOT to exchange property for transportation improvements so long as those improvements are at least equal to the value of the state property.

#### January, 2010 Request For Proposals

At legislative direction, in January, 2010 an RFP was issued offering to exchange the WSDOT-owned lot across from the Edmonds ferry terminal for a grade-separated pedestrian facility. Under the RFP, the value of any pedestrian facility would need to equal or exceed the value of the lot (\$1.54 million). Nine private parties initially expressed interest, but only three remained actively interested throughout the procurement process.

#### Issues Encountered During RFP Process

During the procurement process, private developers and WSDOT each identified issues that required resolution (+ means issue was resolved; - means issue unresolved):

<b>Developer Issues</b>	
Additional time needed to develop proposals	+
Penalty for non-performance for environmental reasons	+
Conflict with other users and public agencies in desired location of pedestrian facility	+
Reimbursement of up to \$200,000 for WSDOT's costs if project not completed within three years	-
Bond for full project amount due at time of contract signing	-
<b>WSDOT Issues</b>	
Need to allow future expansion of walkway across SR 104	+
Property value must be determined when title transfers	+
Short-term loss of WSDPT parking concession revenues due to conversion of land for development	+
Long-term loss of WSF employee parking once land is transferred to developer	-

#### Request for Proposal (RFP) Conclusion

Two of the three private developers that had been active during the RFP process decided not to further engineer their proposals. They each concluded that the increase in zoning heights required in order for the project to be financially feasible was too speculative to justify the development costs. The last developer remained active until the end, but ultimately decided not

to submit a proposal by the June 30, 2010 deadline. Therefore, no proposals were received for the Edmonds partnership project.

### Primary Obstacles to an Edmonds Public-Private Partnership Project

#### **From WSDOT's perspective:**

- **Loss of Parking:** While loss of employee parking can be mitigated in the short run (by requiring compensation from a developer), Washington State Ferries needs use of the lot for employees who currently park on the dock.
- **Danger to Pedestrians:** Because an overpass across the Burlington Northern Santa Fe (BNSF) tracks requires three flights of stairs on each side, there is a concern that pedestrians will not use it and instead continue crossing the tracks at-grade.
- **Financial Risk:** WSDOT will not assume the risk and/or cost of the private sector's obligations to subcontractors either before or during construction.

#### **From the developer's perspective:**

- **Bond Timing:** A project construction bond is due at the time the contract is signed even when actual construction would not begin until up to three years later. To complicate matters, the bond is unobtainable without prior city zoning approval.
- **Financial Risk:** WSDOT's \$200,000 liquidated damages clause, added 30 days before the RFP due date, was the "tipping point" for acceptable financial risk to the private sector.

### **Results and Lessons Learned from Edmonds PPP Solicitation.**

Ultimately, no proposals were submitted to exchange a grade-separated transportation improvement for the development rights and potential ownership of the Edmonds property. Nine different firms requested further information and registered as potentially-interested parties. Of the nine, three were actively interested and known to be investigating the financial feasibility of the proposed project.

Several issues were encountered in the attempt to enter into a public-private partnership involving the property across from the Edmonds Terminal. Shortly after the RFP deadline, WSDOT conducted debriefing sessions with the three firms that were believed to be preparing proposals. The purpose of the debriefing sessions was to find out why the private sector did not submit any proposals; and how the state could improve the project or its solicitation process in the future. The debriefing sessions provided important feedback:

- **Market timing:** since the project was originally conceived in early 2008, the commercial real estate market plunged. This negatively affected the proposed project's financial feasibility. Had the state been able to respond and act within six months of the original proposal, project financing might have been easier to achieve.

- **Lack of clear support from local jurisdictions:** the proposed project would have required a controversial zoning code change. There were no clear signs of support for the necessary change from the city council, making project approvals too uncertain. Ideally the state, the city and a development partner would be working in tandem to find acceptable solutions.
- **State unclear about its project goals:** because the project was initiated by private developers and directed by the legislature, WSDOT and WSF were unclear about what type of improvements would be required to meet state agency approval. Ambiguity about a project's goals made it very difficult for developers to propose acceptable solutions.
- **Unsolicited Proposals:** the current moratorium on unsolicited proposals cut off a potentially valuable tool to expedite a state review of the project's merits.
- **Bonding and Security:** the timing when a full project bond would have been required – at the time of contract execution – was seen as unnecessarily burdensome, since a Notice to Proceed with construction could still have been 3 years away. The state should balance its need to secure its interests with commercially-reasonable terms.

In addition to the information gleaned from the private sector, various WSDOT offices, the Attorney General's Office, and local jurisdictions all noted other areas for improvement. These included the following:

- The authority to undertake alternative contracting and alternative project delivery must be made clear; the current RCW 47.29 was viewed as weak authority for WSDOT to use new or innovative methods of project delivery, since there was no cross-reference to the public works sections of law (Title 39 generally).
- The minimum project threshold for WSDOT to use its pilot project authority for small scale design/build projects (RCW 47.20.785(2)) should be modified, particularly where a proposed project would be delivered using an Equivalent Value Exchange or as an unsolicited proposal.
- Funds derived from an Equivalent Value Exchange are presumed to be deposited into the Advance Right-of-Way revolving fund. This would impair the ability of the state to reinvest those funds received from an Equivalent Value Exchange back into a transportation facility improvement.

## **Section 3: Best Practices for Public Private Partnerships**

### **Principle Issues**

The issue of the proper role of the Transportation Commission in selecting, reviewing and approving transportation projects is reserved for legislative determination. This report does not take up this question. Rather, this report focuses on the question of how the current law can be improved for the non-toll projects, so that TIP becomes a viable, if not preferred method of public private partnership project review and approval.

The principle issues to be addressed in the remaining sections of the report are as follows:

1. What provisions of RCW 47.29 should be changed in order to better facilitate the development of non-toll road public private partnership projects through the TIP process?
2. What other provisions of law should be changed to encourage the development of non-toll road projects by WSDOT?
3. What additional improvements can be made in programs, policies or practices that would further encourage the development of non-toll transportation public private partnerships?

### **Peer Organizations for Best Practices Review**

To provide better insight into how improvements can be made, the Transportation Commission and WSDOT staff researched public private partnership-related laws and programs governing other public sector agencies in Washington State that have been successful in their public private partnership initiatives. A compendium of selected laws and projects from these and other agencies can be found in Appendix G.

The research focused on identifying the key features and techniques for delivering successful projects. The following public sector peer organizations were chosen for this research.

1. **Sound Transit**  
Sound Transit is authorized to undertake transit-oriented development (TOD) projects, and was cited as having strong policies guiding these public private partnership efforts.
2. **King County Transportation**  
King County has had an active and successful transit-oriented development program for the past 10 years. Their public private partnership projects have included joint development of transit stations, park and rides and structured parking with retail/office.
3. **Kitsap Transit**  
Kitsap Transit is renowned for innovative projects and service delivery. The Bremerton Transportation Center is a multimodal, mixed use public private partnership project that was developed with Kitsap Transit's leadership.

4. **City of Vancouver**

The City of Vancouver has played a key role in the redevelopment of its downtown core, including significant mixed-use development projects that leveraged multiple sources of partnership funding.

5. **City of Olympia**

The City of Olympia recently solicited proposals for a potential partnership project very similar to WSDOT's proposed public private partnership at Edmonds. Olympia's project would have exchanged land in the downtown area for a structured parking facility.

After reviewing the background materials, in-person interviews were conducted with each organization's project delivery experts. The interview questions and information regarding each jurisdiction is attached as Appendix H. Rather than recounting all the information provided by each organization, the responses have been documented and are summarized around basic themes, which could be considered "Best Practices." Within these themes, comparisons are made and conclusions drawn about how the state's public private partnership laws and program might be improved.

### **Basic Findings from the Best Practices Review**

#### Organizational structure and responsibilities for developing public private partnerships

Responsibility for developing partnership projects tends to fall to professional staff and organizations charged with economic development, including transit-oriented development. In most cases, project concepts were developed at the professional staff level, not at the level of elected officials or oversight boards (such as transit boards).

The smaller the organization, the less likely it is to find professional staff with joint development or public private partnerships as their sole or even primary area of focus. The mid and large size organizations typically have professionals that focus solely on joint development and other partnership-type opportunities.

#### Legal provisions governing public private partnerships

In all organizations, the applicable laws and procedural rules were more flexible than the state laws, particularly related to the steps for considering, reviewing and negotiating partnership agreements (in other words, the methods of procurement).

Public contracting laws do govern their projects under RCW 39.04 (Public Works) or RCW 39.10 (Alternative Public Works Contracting Procedures). However, these laws are primarily aimed at ensuring a fair and competitive process for awarding engineering design and construction contracts as opposed to mandating specific review criteria. In contrast, the state's laws also dictate the types of projects that may be undertaken, who may nominate partnership project concepts, specific review processes and who must participate in project review, the criteria that must be considered, and several different levels of contract approval.



### Soliciting partners and proposals

Most experts advised that active involvement and early buy-in or approval from other affected public agencies should be a required pre-condition for a public private partnership. This situation did not exist in WSDOT's attempt at a public-private partnership at the Edmonds terminal, and it appears that the lack of clear support for a proposed project by the Edmonds city council was a significant factor as developers decided to pass on that project.

### Oversight and approval process

The final project approval authorities (councils and boards) were always kept abreast of project status, but none were involved in the development and negotiations of public private partnership proposals or projects.

Often, the approval authorities established the boundaries for the types of partnerships they were interested in considering, and allowed their professional staff to spend months (or in some cases, years) to work on the partnerships and funding agreements.

In each jurisdiction, the council, board or commission that retained approval authority also had a beneficial ownership interest in all or part of the transportation improvement.

None of the jurisdictions required any special review panels. If additional or expert review was required, this was often conducted by specialized consultants retained by the public sector owners at the outset of the development process, in order to help shape proposals and negotiations. None of the jurisdictions had a "hindsight" review conducted after negotiation of contracts (except for final approval authority by the jurisdiction's governing body).

### Project-related funding

All organizations utilize outside experts to a much greater degree than currently possible at WSDOT. The larger organizations had sufficient funding to tap into expertise as required, which was particularly needed for proposed land uses and projects within the shoreline, and for retail and commercial real estate expertise.

Innovative funding mostly consisted of contributions to the project costs from multiple funding partners, a common technique. Some projects were more innovative. One project proposed to exchange city land plus the rights to a percentage of parking revenues for construction and operations of a parking facility.

### Internal alignment to the mission and purpose of Public Private Partnerships

Some of the strongest advice for the State was to clearly establish the goals of the project up front, before entering into a solicitation process. The means for achieving those goals should remain flexible and not bound up in process or formal criteria, but the ends should always be clear and capable of measurement.

## Section 4: Recommended Changes to Public Private Partnership Laws, Project Approval and Delivery Methods

The following recommendations are based on the Commission's own experiences and observations since the passage of the Public Private Partnerships law in 2005 (some of which has been documented in past reports related to the TIP program); observations and suggestions from other state agencies, including WSDOT; insights gleaned from the private sector (particularly in light of WSDOT's attempt to develop a public private partnership project at the Edmonds terminal); and from the input provided by the five public agencies in Washington State that participated in the best practices review.

### Recommendations:

1. In order to deliver multi-modal transportation projects under the TIP program, the current RCW 47.29 must draw a clear distinction between traditional toll-based PPP projects, versus non-toll road PPP project. Different development and financing powers, selection criteria, oversight and approval processes should apply to non-toll projects. *RCW 47.29 should be amended to create this distinction (leaving intact current law provisions that apply to toll projects).*

2. *For certain types of non-toll PPP projects, WSDOT should be required to develop those projects with the oversight of the Transportation Commission.* Since 2005 transportation governance reform, Transportation Commission no longer directs and oversees WSDOT projects and programs. However, in our review of the Best Practices of other public agencies, in each instance there was a governing body or board responsible for reviewing and approving significant transactions. We believe that certain types of PPP transactions warrant this oversight, and recommend that the statute be amended to require Transportation Commission review and approval in the following instances:

- Sale or permanent disposition of state assets (state-owned land, buildings, etc.); and
- Incurring obligations that could significantly bind future state legislative appropriations (lease payment agreements; assumption of significant facility maintenance responsibilities; alternative financing/borrowing arrangements; etc.).

3. With Transportation Commission oversight in place, *the project selection criteria, review and approval process should be modified to more appropriately fit the type and size of non-toll PPP project.* We further recommend the following changes:

- Streamline the review and approval process by concentrating activities within two organizations (WSDOT and Transportation Commission) instead of the current six organizations (see revised flow chart vs. original process approval “spaghetti” chart);
- Eliminate requirement that non-toll PPP projects be included in the WTP, STIP or formally identified as a “priority need” of the state;

- Eliminate the step requiring that a project be formally initiated through a Project Registry;
- Allow the Commission to call for an Expert Review Panel (ERP) only when they deem it necessary; and if a Commission ERP is convened, establish and involve the panel at the beginning of the RFP process instead of after a tentative agreement has already been negotiated between WSDOT and private partner.

4. The ability of the State to enter into beneficial PPP's could be enhanced by allowing WSDOT limited experimentation with innovative project delivery and contracting features often found in other public agencies and PPP laws. The Transportation Commission could provide careful guidance and strict oversight of the experimental use of these innovative project delivery and contracting powers, serving the same function for transportation projects that the legislatively-created Capital Project Advisory Review Board (CPARB) serves for general fund capital projects. Under *Transportation Commission guidance and oversight*, WSDOT should be *authorized to carry out a pilot project* that allows WSDOT to:

- Utilize the design/build method of project delivery, for projects between \$0 - \$10 million, for a maximum of five projects (removing the minimum project cost of \$2 million in the current pilot program; keeping the maximum number of five projects);
- For PPP projects developed under RCW 47.29, authorize WSDOT to require performance guarantees or similar security (including bonds), at any time up to a Notice to Proceed (time of construction), so long as the state's interests are adequately protected throughout the course of the project;
- Allow WSDOT and the Commission to develop guidelines for, and undertake a limited number of projects using Pre-Development Agreements (PDA), which allows the state to competitively procure a development partner first, before a determination is made about the project's final scope, and allows both parties to terminate the agreement or proceed with a full project development;
- When valuing all property and assets that are subject to a PPP project, allow or direct WSDOT to use benefit/cost methodologies (rather than simple property appraisals). Benefit/cost methodology will appropriately calculate all transportation and public benefits to be received in any proposed exchange.

Chapter 47.29 RCW  
Transportation innovative partnerships

RCW Sections

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- 47.29.020 Definitions.
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- 47.29.040 Purpose.
- 47.29.050 Eligible projects.
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- 47.29.090 Project review, evaluation, and selection.
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- 47.29.900 Captions not law.

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**47.29.010**  
**Finding — Intent.**

(1) The legislature finds that the public-private transportation initiatives act created under chapter 47.46 RCW has not met the needs and expectations of the public or private sectors for the development of transportation projects. The legislature intends to phase out chapter 47.46 RCW coincident with the completion of the Tacoma Narrows Bridge - SR 16 public-private partnership. From July 24, 2005, this chapter will provide a more desirable and effective approach to developing transportation projects in

partnership with the private sector by applying lessons learned from other states and from this state's ten-year experience with chapter 47.46 RCW.

(2) It is the legislature's intent to achieve the following goals through the creation of this new approach to public-private partnerships:

- (a) To provide a well-defined mechanism to facilitate the collaboration between public and private entities in transportation;
- (b) To bring innovative thinking from the private sector and other states to bear on public projects within the state;
- (c) To provide greater flexibility in achieving the transportation projects; and
- (d) To allow for creative cost and risk sharing between the public and private partners.

(3) The legislature intends that the powers granted in this chapter to the commission or department are in addition to any powers granted under chapter 47.56 RCW.

(4) It is further the intent of the legislature that an expert review panel be established for each project developed under chapter 334, Laws of 2006. Expert review panels shall be responsible for reviewing selected proposals, analyzing and reviewing tentative agreements, and making recommendations to the governor and the transportation commission on the advisability of executing agreements under chapter 334, Laws of 2006.

[2006 c 334 § 48; 2005 c 317 § 1.]

#### Notes:

**Effective date -- 2006 c 334:** See note following RCW 47.01.051.

## 47.29.020

### Definitions.

The definitions in this section apply throughout this chapter.

- (1) "Authority" means the transportation commission.
- (2) "Commission" means the transportation commission.
- (3) "Department" means the department of transportation.
- (4) "Eligible project" means any project eligible for development under RCW 47.29.050.
- (5) "Eligible public works project" means only a project that meets the criteria of either RCW 47.29.060 (3) or (4).
- (6) "Private sector partner" and "private partner" means a person, entity, or organization that is not the federal government, a state, or a political subdivision of a state.
- (7) "Public funds" means all moneys derived from taxes, fees, charges, tolls, etc.
- (8) "Public sector partner" and "public partner" means any federal or state unit of government, bistate transportation organization, or any other political subdivision of any state.
- (9) "Transportation innovative partnership program" or "program" means the program as outlined in RCW 47.29.040.
- (10) "Transportation project" means a project, whether capital or operating, where the state's primary purpose for the project is to preserve or facilitate the safe transport of people or goods via any mode of travel. However, this does not include projects that are primarily for recreational purposes, such as parks, hiking trails, off-road vehicle trails, etc.
- (11) "Unit of government" means any department or agency of the federal government, any state or agency, office, or department of a state, any city, county, district, commission, authority, entity, port, or other public corporation organized and existing under statutory law or under a voter-approved charter or initiative, and any intergovernmental entity created under chapter 39.34 RCW or this chapter.



[2005 c 317 § 2.]

#### 47.29.030

##### **Transportation commission powers and duties.**

In addition to the powers it now possesses, the commission shall:

- (1) Approve or review contracts or agreements authorized in this chapter;
- (2) Adopt rules to carry out this chapter and govern the program, which at a minimum must address the following issues:
  - (a) The types of projects allowed; however, all allowed projects must be included in the Washington transportation plan or identified by the authority as being a priority need for the state;
  - (b) The types of contracts allowed, with consideration given to the best practices available;
  - (c) The composition of the team responsible for the evaluation of proposals to include:
    - (i) Washington state department of transportation staff;
    - (ii) An independent representative of a consulting or contracting field with no interests in the project that is prohibited from becoming a project manager for the project and bidding on any part of the project;
    - (iii) An observer from the state auditor's office or the joint legislative audit and review committee;
    - (iv) A person appointed by the commission, if the secretary of transportation is a cabinet member, or appointed by the governor if the secretary of transportation is not a cabinet member; and
    - (v) A financial expert;
  - (d) Minimum standards and criteria required of all proposals;
  - (e) Procedures for the proper solicitation, acceptance, review, and evaluation of projects;
  - (f) Criteria to be considered in the evaluation and selection of proposals that includes:
    - (i) Comparison with the department's internal ability to complete the project that documents the advantages of completing the project as a partnership versus solely as a public venture; and
    - (ii) Factors such as, but not limited to: Priority, cost, risk sharing, scheduling, and management conditions;
  - (g) The protection of confidential proprietary information while still meeting the need for public disclosure that is consistent with RCW 47.29.190;
  - (h) Protection for local contractors to participate in subcontracting opportunities;
  - (i) Specifying that maintenance issues must be resolved in a manner consistent with the personnel system reform act, chapter 41.80 RCW;
  - (j) Specifying that provisions regarding patrolling and law enforcement on a public facility are subject to approval by the Washington state patrol;
- (3) Adopt guidelines to address security and performance issues.

Preliminary rules and guidelines developed under this section must be submitted to the chairs and ranking members of both transportation committees by November 30, 2005, for review and comment. All final rules and guidelines must be submitted to the full legislature during the 2006 session for review.

[2005 c 317 § 3.]

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**47.29.040****Purpose.**

The Transportation Innovative Partnerships Act is created for the planning, acquisition, design, financing, management, development, construction, reconstruction, replacement, improvement, maintenance, preservation, repair, and operation of transportation projects. The goals of this chapter are to:

- (1) Reduce the cost of transportation project delivery;
- (2) Recover transportation investment costs;
- (3) Develop an expedited project delivery process;
- (4) Encourage business investment in public infrastructure;
- (5) Use any fund source outside the state treasury, where financially advantageous and in the public interest;
- (6) Maximize innovation;
- (7) Develop partnerships between and among private entities and the public sector for the advancement of public purposes on mutually beneficial terms;
- (8) Create synergies between and among public sector entities to develop projects that serve both transportation and other important public purposes; and
- (9) Access specialized construction management and project management services and techniques available in the private sector.

[2005 c 317 § 4.]

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**47.29.050****Eligible projects.**

Projects eligible for development under this chapter include:

- (1) Transportation projects, whether capital or operating, where the state's primary purpose for the project is to facilitate the safe transport of people or goods via any mode of travel. However, this does not include projects that are primarily for recreational purposes, such as parks, hiking trails, off-road vehicle trails, etc.; and
- (2) Facilities, structures, operations, properties, vehicles, vessels, or the like that are developed concurrently with an eligible transportation project and that are capable of (a) providing revenues to support financing of an eligible transportation project, or (b) that are public projects that advance public purposes unrelated to transportation.

[2005 c 317 § 5.]

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**47.29.060****Eligible financing.**

(1) Subject to the limitations in this section, the department may, in connection with the evaluation of eligible projects, consider any financing mechanisms identified under subsections (3) through (5) of this section or any other lawful source, either integrated as part of a project proposal or as a separate, stand-alone proposal to finance a project. Financing may be considered for all or part of a proposed project. A project may be financed in whole or in part with:

- (a) The proceeds of grant anticipation revenue bonds authorized by 23 U.S.C. Sec. 122 and applicable state law. Legislative authorization and appropriation is required in order to use this source of financing;



(b) Grants, loans, loan guarantees, lines of credit, revolving lines of credit, or other financing arrangements available under the Transportation Infrastructure Finance and Innovation Act under 23 U.S.C. Sec. 181 et seq., or any other applicable federal law;

(c) Infrastructure loans or assistance from the state infrastructure bank established by RCW 82.44.195;

(d) Federal, state, or local revenues, subject to appropriation by the applicable legislative authority;

(e) User fees, tolls, fares, lease proceeds, rents, gross or net receipts from sales, proceeds from the sale of development rights, franchise fees, or any other lawful form of consideration. However, projects financed by tolls or equivalent funding sources must first be authorized by the legislature under RCW 47.56.820.

(2) As security for the payment of financing described in this section, the revenues from the project may be pledged, but no such pledge of revenues constitutes in any manner or to any extent a general obligation of the state. Any financing described in this section may be structured on a senior, parity, or subordinate basis to any other financing.

(3) For any transportation project developed under this chapter that is owned, leased, used, or operated by the state, as a public facility, if indebtedness is issued, it must be issued by the state treasurer for the transportation project.

(4) For other public projects defined in RCW 47.29.050(2) that are developed in conjunction with a transportation project, financing necessary to develop, construct, or operate the public project must be approved by the state finance committee or by the governing board of a public benefit corporation as provided in the federal Internal Revenue Code section 63-20;

(5) For projects that are developed in conjunction with a transportation project but are not themselves a public facility or public project, any lawful means of financing may be used.

[2008 c 122 § 18; 2005 c 317 § 6.]

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#### **47.29.070**

##### **Use of federal funds and similar revenues.**

The department may accept from the United States or any of its agencies such funds as are available to this state or to any other unit of government for carrying out the purposes of this chapter, whether the funds are made available by grant, loan, or other financing arrangement. The department may enter into such agreements and other arrangements with the United States or any of its agencies as may be necessary, proper, and convenient for carrying out the purposes of this chapter, subject to RCW 47.29.080.

[2005 c 317 § 7.]

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#### **47.29.080**

##### **Other sources of funds or property.**

The department may accept from any source any grant, donation, gift, or other form of conveyance of land, money, other real or personal property, or other valuable thing made to the state of Washington, the department, or a local government for carrying out the purposes of this chapter.

Any eligible project may be financed in whole or in part by contribution of any funds or property made by any private entity or public sector partner that is a party to any agreement entered into under this chapter.

[2005 c 317 § 8.]

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#### **47.29.090**

##### **Project review, evaluation, and selection.**

(1) Subject to subsection (2) of this section, the commission may:



- (a) Solicit concepts or proposals for eligible projects from private entities and units of government;
  - (b) On or after January 1, 2007, accept unsolicited concepts or proposals for eligible projects from private entities and units of government, subject to RCW 47.29.170;
  - (c) Direct the department to evaluate projects for inclusion in the transportation innovative partnerships program that are already programmed or identified for traditional development by the state;
  - (d) Direct the department to evaluate the concepts or proposals received under this section; and
  - (e) Select potential projects based on the concepts or proposals. The evaluation under this subsection must include consultation with any appropriate unit of government.
- (2) Before undertaking any of the activities contained in subsection (1) of this section, the commission must have:
- (a) Completed the tolling feasibility study; and
  - (b) Adopted rules specifying procedures for the proper solicitation, acceptance, review, and evaluation of projects, which procedures must include:
    - (i) A comparison with the department's internal ability to complete the project that documents the advantages of completing the project as a partnership versus solely as a public venture; and
    - (ii) Factors such as priority, cost, risk sharing, scheduling, and management conditions.

[2005 c 317 § 9.]

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#### **47.29.100**

##### **Administrative fee.**

The department may charge a reasonable administrative fee for the evaluation of an unsolicited project proposal. The amount of the fee will be established in rules of the commission.

[2005 c 317 § 10.]

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#### **47.29.110**

##### **Funds for proposal evaluation and negotiation.**

The department may spend, out of any funds identified for the purpose, such moneys as may be necessary for the evaluation of concepts or proposals for eligible projects and for negotiating agreements for eligible projects authorized by this chapter. The department may employ engineers, consultants, or other experts the department determines are needed for the purposes of doing the evaluation and negotiation. Expenses incurred by the department under this section before the issuance of transportation project bonds or other financing must be paid by the department and charged to the appropriate project. The department shall keep records and accounts showing each amount so charged.

Unless otherwise provided in the omnibus transportation budget the funds spent by the department under this section in connection with the project must be repaid from the proceeds of the bonds or other financing upon the sale of transportation project bonds or upon obtaining other financing for an eligible project, as allowed by law or contract.

[2005 c 317 § 11.]

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#### **47.29.120**

##### **Expert consultation.**

The commission and department may consult with legal, financial, and other experts inside and outside the public sector in the

evaluation, negotiation, and development of projects under this chapter, consistent with RCW 43.10.040 where applicable.

[2005 c 317 § 12.]

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#### **47.29.130**

##### **Contracted studies.**

Notwithstanding any other provision of law, and in the absence of any direct federal funding or direction, the department may contract with a private developer of a selected project proposal to conduct environmental impact studies and engineering and technical studies.

[2005 c 317 § 13.]

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#### **47.29.140**

##### **Partnership agreements.**

(1) The following provisions must be included in any agreement to which the state is a party:

(a) For any project that proposes terms for stand-alone maintenance or asset management services for a public facility, those services must be provided in a manner consistent with any collective bargaining agreements, the personnel system reform act (chapter 41.80 RCW), and civil service laws that are in effect for the public facility;

(b) Transportation projects that are selected for development under this chapter must be identified in the Washington transportation plan or be identified by the authority as being a priority need for the state;

(c) If there is a tolling component to the project, then it must be specified that tolling technology used in the project must be consistent with tolling technology standards adopted by the department for transportation-related projects;

(d) Provisions for bonding, financial guarantees, deposits, or the posting of other security to secure the payment of laborers, subcontractors, and suppliers who perform work or provide materials as part of the project;

(e) All projects must be financed in a manner consistent with RCW 47.29.060. This chapter is null and void if this subsection or RCW 47.29.060 fails to become law or is held invalid by a court of final jurisdiction.

(2) Agreements between the state and private sector partners entered into under this section must specifically include the following contractual elements:

(a) The point in the project at which public and private sector partners will enter the project and which partners will assume responsibility for specific project elements;

(b) How the partners will share management of the risks of the project;

(c) How the partners will share the costs of development of the project;

(d) How the partners will allocate financial responsibility for cost overruns;

(e) The penalties for nonperformance;

(f) The incentives for performance;

(g) The accounting and auditing standards to be used to evaluate work on the project;

(h) For any project that reverts to public ownership, the responsibility for reconstruction or renovations that are required in order for a facility to meet all applicable government standards upon reversion of the facility to the state; and

(i) Provisions for patrolling and law enforcement on transportation projects that are public facilities.

[2005 c 317 § 14.]



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**47.29.150****Public involvement and participation.**

(1) Before final approval, agreements entered into under this chapter must include a process that provides for public involvement and participation with respect to the development of the projects. This plan must be submitted along with the proposed agreement, and both must be approved under RCW 47.29.160 before the state may enter a binding agreement.

(2) All workshops, forums, open houses, meetings, public hearings, or similar public gatherings must be administered and attended by representatives of the state and any other public entities that are party to an agreement authorized by this chapter.

[2005 c 317 § 15.]

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**47.29.160****Approval and execution.**

(1) Before approving an agreement under subsection (2) of this section, the commission, with the technical assistance of the department, must:

- (a) Prepare a financial analysis that fully discloses all project costs, direct and indirect, including costs of any financing;
- (b) Publish notice and make available the contents of the agreement, with the exception of patent information, at least twenty days before the public hearing required in (c) of this subsection; and
- (c) Hold a public hearing on the proposed agreement, with proper notice provided at least twenty days before the hearing. The public hearing must be held within the boundaries of the county seat of the county containing the project.

(2) The commission must allow at least twenty days from the public hearing on the proposed agreement required under subsection (1)(c) of this section before approving and executing any agreements authorized under this chapter.

[2005 c 317 § 16.]

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**47.29.170****Unsolicited proposals.**

Before accepting any unsolicited project proposals, the commission must adopt rules to facilitate the acceptance, review, evaluation, and selection of unsolicited project proposals. These rules must include the following:

- (1) Provisions that specify unsolicited proposals must meet predetermined criteria;
- (2) Provisions governing procedures for the cessation of negotiations and consideration;
- (3) Provisions outlining that unsolicited proposals are subject to a two-step process that begins with concept proposals and would only advance to the second step, which are fully detailed proposals, if the commission so directed;
- (4) Provisions that require concept proposals to include at least the following information: Proposers' qualifications and experience; description of the proposed project and impact; proposed project financing; and known public benefits and opposition; and
- (5) Provisions that specify the process to be followed if the commission is interested in the concept proposal, which must include provisions:
  - (a) Requiring that information regarding the potential project would be published for a period of not less than thirty days, during which time entities could express interest in submitting a proposal;
  - (b) Specifying that if letters of interest were received during the thirty days, then an additional sixty days for submission of the

fully detailed proposal would be allowed; and

(c) Procedures for what will happen if there are insufficient proposals submitted or if there are no letters of interest submitted in the appropriate time frame.

The commission may adopt other rules as necessary to avoid conflicts with existing laws, statutes, or contractual obligations of the state.

The commission may not accept or consider any unsolicited proposals before July 1, 2011.

[2009 c 470 § 702; 2007 c 518 § 702; 2006 c 370 § 604; 2005 c 317 § 17.]

#### Notes:

**Effective date -- 2009 c 470:** See note following RCW 46.68.170.

**Severability -- Effective date -- 2007 c 518:** See notes following RCW 46.68.170.

**Severability -- 2006 c 370:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 370 § 701.]

**Effective date -- 2006 c 370:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2006]." [2006 c 370 § 702.]

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## 47.29.180

### Advisory committees.

For projects with costs, including financing costs, of three hundred million dollars or greater, advisory committees are required.

(1) The commission must establish an advisory committee to advise with respect to eligible projects. An advisory committee must consist of not fewer than five and not more than nine members, as determined by the public partners. Members must be appointed by the commission, or for projects with joint public sector participation, in a manner agreed to by the commission and any participating unit of government. In making appointments to the committee, the commission shall consider persons or organizations offering a diversity of viewpoints on the project.

(2) An advisory committee shall review concepts or proposals for eligible projects and submit comments to the public sector partners.

(3) An advisory committee shall meet as necessary at times and places fixed by the department, but not less than twice per year. The state shall provide personnel services to assist the advisory committee within the limits of available funds. An advisory committee may adopt rules to govern its proceedings and may select officers.

(4) An advisory committee must be dissolved once the project has been fully constructed and debt issued to pay for the project has been fully retired.

[2005 c 317 § 18.]

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## 47.29.190

### Confidentiality.

A proposer shall identify those portions of a proposal that the proposer considers to be confidential, proprietary information, or trade secrets and provide any justification as to why these materials, upon request, should not be disclosed by the authority. Patent information will be covered until the patent expires. Other information such as originality of design or records of negotiation may only be protected under this section until an agreement is reached. Disclosure must occur before final agreement and execution of the contract. Projects under federal jurisdiction or using federal funds must conform to federal regulations under the Freedom of Information Act.



[2005 c 317 § 19.]

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**47.29.200****Prevailing wages.**

If public funds are used to pay any costs of construction of a public facility that is part of an eligible project, chapter 39.12 RCW applies to the entire eligible public works project.

[2005 c 317 § 20.]

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**47.29.210****Government agreements.**

The state may, either separately or in combination with any other public sector partner, enter into working agreements, coordination agreements, or similar implementation agreements, including the formation of bistate transportation organizations, to carry out the joint implementation of a transportation project selected under this chapter. The state may enter into agreements with other units of government or Canadian provinces for transborder transportation projects.

[2005 c 317 § 21.]

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**47.29.220****Eminent domain.**

The state may exercise the power of eminent domain to acquire property, rights-of-way, or other rights in property for projects that are necessary to implement an eligible project developed under this chapter, regardless of whether the property will be owned in fee simple by the state.

[2005 c 317 § 22.]

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**47.29.230****Transportation innovative partnership account.**

(1) The transportation innovative partnership account is established in the custody of the state treasurer separate and distinct from the state general fund. Interest earned by the transportation innovative partnership account must be credited to the account. The account is subject to allotment procedures under chapter 43.88 RCW.

(2) The following moneys must be deposited into the transportation innovative partnership account:

- (a) Proceeds from bonds or other financing instruments issued under RCW 47.29.250;
- (b) Revenues received from any transportation project developed under this chapter or developed under the general powers granted to the department; and
- (c) Any other moneys that are by donation, grant, contract, law, or other means transferred, allocated, or appropriated to the account.

(3) Moneys in the transportation innovative partnership account may only be expended upon evidence of approval by the Washington state legislature, either upon appropriation of supporting state funds or by other statutory direction.

(4) The state treasurer shall serve as a fiduciary for the purpose of carrying out this chapter and implementing all or portions of any transportation project financed under this chapter.

(5) Moneys in the transportation innovative partnership account that were derived from revenue subject to Article II, section 40 (Amendment 18) of the Washington state Constitution, may be used only for purposes authorized by that provision of the state Constitution.

(6) The state treasurer shall establish separate subaccounts within the transportation innovative partnership account for each transportation project that is initiated under this chapter or under the general powers granted to the department. Except as provided in subsection (5) of this section, the state may pledge moneys in the transportation innovative partnership account to secure revenue bonds or any other debt obligations relating to the project for which the account is established.

[2005 c 317 § 23.]

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#### **47.29.240**

##### **Use of account.**

(1) The state may use moneys in the transportation innovative partnership subaccount to ensure the repayment of loan guarantees or extensions of credit made to or on behalf of private entities engaged in the planning, acquisition, financing, development, design, construction, reconstruction, replacement, improvement, maintenance, preservation, management, repair, or operation of any eligible project that is related to a subaccount established under this chapter.

(2) The lien of a pledge made under this section is subordinate to the lien of a pledge securing bonds payable from moneys in the motor vehicle fund established in RCW 46.68.070, or the transportation innovative partnership account established in RCW 47.29.230.

[2005 c 317 § 24.]

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#### **47.29.250**

##### **Issuing bonds and other obligations.**

(1) In addition to any authority the commission or department has to issue and sell bonds and other similar obligations, this section establishes continuing authority for the issuance and sale of bonds and other similar obligations in a manner consistent with this section. To finance a project in whole or in part, the commission may request that the state treasurer issue revenue bonds on behalf of the public sector partner. The bonds must be secured by a pledge of, and a lien on, and be payable only from moneys in the transportation innovative partnership account established in RCW 47.29.230, and any other revenues specifically pledged to repayment of the bonds. Such a pledge by the public partner creates a lien that is valid and binding from the time the pledge is made. Revenue bonds issued under this section are not general obligations of the state or local government and are not secured by or payable from any funds or assets of the state other than the moneys and revenues specifically pledged to the repayment of such revenue bonds.

(2) Moneys received from the issuance of revenue bonds or other debt obligations, including any investment earnings thereon, may be spent:

- (a) For the purpose of financing the costs of the project for which the bonds are issued;
- (b) To pay the costs and other administrative expenses of the bonds;
- (c) To pay the costs of credit enhancement or to fund any reserves determined to be necessary or advantageous in connection with the revenue bonds; and
- (d) To reimburse the public sector partners for any costs related to carrying out the projects authorized under this chapter.

[2005 c 317 § 25.]

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#### **47.29.260**

##### **Study and report.**

The department shall conduct a study of:



(1) The contracting powers and project management authorities it currently possesses; those same powers and authorities authorized under this chapter; and those powers and authorities employed by other states or the private sector;

(2) Methods of encouraging competition for the development of transportation projects; and

(3) Any additional procedures that may be necessary or desirable for negotiating contracts in situations of a single qualified bidder, in either solicited or unsolicited proposals.

The department must submit its report, along with any recommended legislative changes, to the commission by November 1, 2005, and to the governor and the legislature for consideration in the 2006 legislative session.

[2005 c 317 § 26.]

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#### **47.29.270**

##### **Federal laws.**

Notwithstanding any provision of this chapter, applicable federal laws, rules, and regulations govern in any situation that involves federal funds if the federal laws, rules, or regulations:

(1) Conflict with any provision of this chapter;

(2) Require procedures that are additional to or different from those provided in this chapter; or

(3) Require contract provisions not authorized in this chapter. If no federal funds are provided, state laws, rates, and rules will govern.

[2005 c 317 § 27.]

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#### **47.29.280**

##### **Expert review panel on proposed project agreements — Creation — Authority.**

(1) The department shall establish an expert review panel to review, analyze, and make recommendations to the governor and the transportation commission on whether to approve, reject, or continue negotiations on a proposed project agreement under this chapter. The department shall provide staff to support the expert review panel, if requested by the panel. The expert review panel may utilize any of the consultants under contract for the department, and the expert review panel may contract for consulting expertise in specific areas as it deems necessary to ensure a thorough and critical review of any proposed project agreement.

(2) The governor shall appoint members of an expert review panel that have experience in large capital project delivery, public-private partnerships, public financing of infrastructure improvements, or other areas of expertise that will benefit the panel. The panel shall consist of no less than three, but no more than five members, as determined by the governor.

[2006 c 334 § 49.]

##### **Notes:**

**Effective date -- 2006 c 334:** See note following RCW 47.01.051.

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#### **47.29.290**

##### **Expert review panel on proposed project agreements — Execution of agreements.**

Upon receiving the recommendations of the expert review panel as provided in RCW 47.29.280, and upon consultation with the governor, the transportation commission shall either execute the proposed project agreement, reject the proposed project agreement, or continue further negotiations between the state and a private partner. The execution of any agreement or the rejection of any agreement shall constitute a final action for legal or administrative purposes.

[2006 c 334 § 50.]

**Notes:**

**Effective date -- 2006 c 334:** See note following RCW 47.01.051.

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**47.29.900**

**Captions not law.**

Captions used in this chapter are not part of the law.

[2005 c 317 § 28.]



## Chapter 468-600 WAC

Last Update: 2/6/07

## Transportation innovative partnership program

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#### **468-600-010**

##### **Intent.**

The Transportation Innovative Partnership Act was created to encourage the innovative delivery and funding of important transportation-related projects and services by leveraging resources more readily available in the private sector.

The legislature has articulated the policy goals and objectives of the act, found in chapter 47.29 RCW. These rules are intended to prescribe the processes that will be used to implement a successful transportation innovative partnership program in the state of Washington.

[Statutory Authority: RCW 47.29.030, 07-04-095, § 468-600-010, filed 2/6/07, effective 3/9/07.]

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#### **468-600-015**

##### **Definitions.**

As used in these rules:

- (1) "Commission" means the Washington state transportation commission;
- (2) "Competing proposal" means a written submission to the department that a proposer submits in response to a notice issued by the department under WAC 468-600-320;
- (3) "Department" means the Washington state department of transportation;
- (4) "Eligible project" as defined in RCW 47.29.050 includes:



(a) Transportation projects, whether capital or operating, where the state's primary purpose for the project is to facilitate the safe transport of people or goods via any mode of travel. However, this does not include projects that are primarily for recreational purposes, such as parks, hiking trails, off-road vehicle trails, etc.; and

(b) Facilities, structures, operations, properties, vehicles, vessels, or the like that are developed concurrently with an eligible transportation project and that are capable of providing revenues to support financing of an eligible transportation project, or that are public projects that advance public purposes unrelated to transportation;

(5) "Eligible public works project" means only a project that meets the criteria of either RCW 47.29.060 (3) or (4);

(6) "Governor" means the governor of the state of Washington;

(7) "Key persons" means individuals or personnel employed by or affiliated with a proposer or team of proposers, and who, because of that person's responsibilities and participation in a proposed project, the department has formally designated as key to the proposer's ability to successfully develop or deliver the project;

(8) "Major partner" means, with respect to a limited liability company or joint venture, each firm, business organization or person that has an ownership interest therein in excess of five percent, unless the department has provided an alternate definition that applies only to a specific project or series of projects;

(9) "Major subcontractor" means any subcontractor designated in the proposal to perform ten percent or more of the scope of work for a proposed project, unless the department has provided an alternate definition that applies only to a specific project or series of projects;

(10) "Private sector partner" and "private partner" means a person, entity or organization that is not the federal government, a state, or a political subdivision of the state and that proposes to enter into an agreement with the state to participate in any or all portions of the design, development, construction, improvement, expansion, extension, delivery, operation, maintenance or financing of a project eligible under the act;

(11) "Proposal" means a written submission to the department satisfying the requirements of WAC 468-600-240 or 468-600-250;

(12) "Proposer" means a person, business entity, a consortium of business entities or a public sector entity that submit a proposal for review and evaluation under these rules, whether the proposal was solicited or unsolicited by the department;

(13) "Public facility" means a building, structure, vehicle, vessel or the like where ownership is retained by the public sector and where the facility is available for use by the general public. This does not include any facilities that are owned by the private sector;

(14) "Public funds" means all moneys derived from a public imposition of taxes, fees, charges and tolls, including those imposed by a private entity for the privilege to use a publicly owned facility;

(15) "Public-private partnership" and "PPP" mean a nontraditional arrangement between the department and one or more public or private entities for the implementation of an eligible project as defined in subsection (12) of this section;

(16) "Public project" means a project that is owned by the state or any of its political subdivisions;

(17) "Secretary" means the secretary of the Washington state department of transportation;

(18) "State" means the government of the state of Washington, including all agencies, organizations, boards, commissions, elected or appointed officials, who are empowered to act on behalf of the state of Washington;

(19) "Transportation Innovative Partnership Act" and "act" means the law enacted and codified in chapter 47.29 RCW, and any amendments thereto;

(20) "Transportation innovative partnership program" and "TIPP" means that portion of the department of transportation responsible for implementing and carrying out the duties prescribed in chapter 47.29 RCW, these rules, and under the powers conferred upon the department to implement the executive branch functions of state government;

(21) "WSDOT" means the Washington state department of transportation.



[Statutory Authority: RCW 47.29.030. 07-04-095, § 468-600-015, filed 2/6/07, effective 3/9/07.]

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**468-600-030****Conflict of interest.**

(1) When submitting a proposal, the proposer's representative must certify that he or she is unaware of any information that might be pertinent in determining whether an organizational conflict of interest exists. If the proposer is aware of information that might be pertinent to this issue, the proposer must provide, as an exception to the certification, a disclosure statement fully describing this information in a form approved by the commission as part of its proposal. For purposes of this section, "organizational conflict of interest" means that because of other activities or relationships with other persons, a proposer, a principal officer of a proposer, or a prime contractor who is proposed to perform construction or design work on an eligible project, is unable or potentially unable to render impartial assistance or advice to the state; or the person's objectivity in performing the proposed contract work is or might be otherwise impaired; or a person has an unfair competitive advantage.

(2) After review and approval by the commission, the department shall publish and make available conflict of interest guidelines and policies that encompass the standards of conduct required by federal and state law, and as further required in these administrative rules. The conflict of interest guidelines and policies may be modified as necessary to meet the particular objectives of individual projects, whether those projects emanate from solicited or unsolicited proposals.

[Statutory Authority: RCW 47.29.030. 07-04-095, § 468-600-030, filed 2/6/07, effective 3/9/07.]

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**468-600-035****Proposer conduct.**

(1) Proposers are prohibited from influencing or attempting to influence the evaluation of, or the decision to select a specific project proposal that has been submitted, or may be submitted under these rules, except as specifically allowed under these rules or as specifically allowed by the state in any RFP document. This includes, but is not limited to, attempts to influence officers or employees of the state or elected or appointed officials of the local, state or federal level of government.

(2) For those activities not prohibited by subsection (1) of this section, but which attempt to influence decision making in any legislative branch, proposers must fully disclose all lobbying activities undertaken by any of its contractors, officers, employees or agents that are subject to public disclosure under chapter 42.17 RCW or federal law. For lobbying activities subject to chapter 42.17 RCW, copies of all required disclosure forms for the previous two years' reporting cycles must be submitted.

[Statutory Authority: RCW 47.29.030. 07-04-095, § 468-600-035, filed 2/6/07, effective 3/9/07.]

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**468-600-038****Conflict of interest by state officials — Appearance of fairness.**

(1) Any person elected, appointed or employed by the state, who has a conflict of interest or potential conflict of interest, must disclose such actual or potential conflict of interest and abstain from consideration, discussion, debate, and decision making concerning any project proposal submitted under these rules.

(2) During the pendency of any solicitation, negotiation or selection of a proposal, no member of the commission may engage in ex parte communications with proponents or opponents with respect to the proposal, unless that person:

(a) Places on the record the substance of any written or oral ex parte communications concerning the decision of action; and

(b) Provides that a public announcement of the content of the communication and of the parties' rights to rebut the substance of the communication shall be made at each meeting where action is considered or taken on the subject to which the communication related. This prohibition does not preclude a member of the commission from seeking in a public meeting specific information or data from such parties relative to the decision if both the request and the results are a part of the public record.



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#### **468-600-040**

##### **Release of rights and indemnification of state.**

By submitting a proposal, a proposer thereby waives and relinquishes any claim, right, or expectation to occupy, use, profit from, or otherwise exercise any prerogative with respect to any route, corridor, rights of way, public property or public facility identified in the proposal as being necessary for or part of the proposed project. A proposer may not obtain any claim, right or expectation to use any such route, corridor, rights of way, public property or public facility by virtue of having submitted a proposal that proposes to use it or otherwise involves or affects it.

By submitting such a proposal, a proposer thereby waives and relinquishes any right, claim, copyright, proprietary interest or other right in any proposed location, site, route, corridor, rights of way, alignment, or transportation mode or configuration identified in the proposal as being involved in or related to the proposed project, and proposer agrees to indemnify and hold the state harmless against any such claim made by any of its contractors, subcontractors, agents, employees and assigns.

The waiver and release of rights in this section do not apply to a proposer's rights in any documents, designs and other information and records that constitute "sensitive business, commercial or financial information" as that term is defined and used in WAC 468-600-605.

[Statutory Authority: RCW 47.29.030. 07-04-095, § 468-600-040, filed 2/6/07, effective 3/9/07.]

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#### **468-600-100**

##### **Department to establish programmatic approach to solicitation of TIP projects.**

(1) The department shall establish a programmatic approach, or plan, for the selection and solicitation of TIP projects. The plan will include maintaining a registry of projects eligible for development under a competitive solicitation process. The projects must meet all eligibility requirements of WAC 468-600-015(4). The projects should be reasonably described, including the status of any preliminary development or construction, and any public or private funds committed for any phase of the project, whether expended, appropriated, earmarked or otherwise identified as available for use.

(2) The department shall periodically update the information in the registry, and shall review and consider additions or deletions to the registry at least every two years. When considering additional projects for the registry, or removal of the projects on the registry, the department must publish a request for information that seeks comments and suggestions from the public and private sectors.

(3) At least once every two years, the department must develop a plan for conducting a solicitation of proposals under the TIP program. The purpose of this plan is to:

(a) Encourage sound programming and budgeting practices, which are the basis for submittals required under chapter 43.88 RCW;

(b) Ensure that the department does not issue a request for proposals that exceeds the resources available to properly evaluate, select and enter into development agreements;

(c) Ensure that development of projects under the TIP program would not run contrary to any legislatively enacted direction or express executive policies or directions; and

(d) Provide potential proposers an anticipated schedule for the solicitation and development of certain projects on the registry.

In selecting projects for competitive solicitation, the department should endeavor to follow the published plan for soliciting proposals for projects on the registry. However, the department is not required to solicit only those projects contained on the registry, nor is it required to conduct a solicitation for a predetermined number of projects each year or biennium, nor is it required to undertake projects in the exact order of consideration as published in the *Register*.



[Statutory Authority: RCW 47.29.030, 07-04-095, § 468-600-100, filed 2/6/07, effective 3/9/07.]

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#### **468-600-102**

##### **Selection of projects for solicitation.**

The department may select projects for development that it believes would benefit from the formation of a public-private partnership under the TIP program, and present a draft request for proposals for the selected project or projects to the commission for review and approval to proceed with a solicitation. In making its recommendation of projects for solicitation, the department should seek those that offer the greatest potential to accelerate cost-effective delivery of the project, promote innovative approaches to delivering the project, provide a means of financing for the project that might not otherwise be readily available under a traditional project delivery process, or otherwise meet the policy goals established in RCW 47.29.040. Before approving any projects proposed for solicitation, the commission must ensure that the projects are included in the Washington transportation plan or otherwise identified by the commission as being a priority need for the state.

[Statutory Authority: RCW 47.29.030, 07-04-095, § 468-600-102, filed 2/6/07, effective 3/9/07.]

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#### **468-600-103**

##### **Alternative process for soliciting projects authorized.**

When the department in its sole discretion deems it appropriate to do so given the nature of the proposal, the department may specify requirements for proposal content, and for criteria and procedures under which the proposals will be evaluated and selected, that are in addition to or in lieu of those provided for in WAC 468-600-105 through 468-600-110 and 468-600-300 through 468-600-350. Any alternative process or processes so specified must comply with the requirements of RCW 47.29.010 through 47.29.290. Examples of possible alternative processes include:

(1) Issuing a request for qualifications, where proposers are ranked and selected based on the qualifications of the major partners, major subcontractors and key persons, which would result in a predevelopment agreement being entered into that authorizes the proposer to fully develop a detailed proposal that would be evaluated pursuant to WAC 468-600-350;

(2) Issuing a request for proposals that invites the private sector to make proposals to develop eligible projects that are contained in the department's registry of projects under WAC 468-600-100.

These examples are offered for illustrative purposes only, and should not be construed to limit the scope of the state's discretion or authority to develop proposal and evaluation criteria and processes for any project as long as those criteria and processes comply with the requirements of RCW 47.29.010 et seq.

[Statutory Authority: RCW 47.29.030, 07-04-095, § 468-600-103, filed 2/6/07, effective 3/9/07.]

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#### **468-600-105**

##### **Issuance of requests for proposals.**

The department shall draft and issue requests for proposals at the direction or on behalf of the commission pursuant to WAC 468-600-102. When drafting requests for proposals (RFP), the department must specify requirements for proposal content, and may identify criteria and procedures under which proposals will be evaluated and selected. If the commission approves the projects and the RFP proposed for solicitation, the department shall issue the RFP and publish notice as provided in WAC 468-600-106. The department may set the deadline for responses as it sees fit to encourage full knowledge, opportunity and competition among private entities. At a minimum, the request for proposals for each transportation project must include the following:

(1) **General information.**

(a) Notice of any preproposal conference as follows:



- [Statutory Authority: RCW 47.29.030, 07-04-095, § 468-600-105, filed 2/6/07, effective 3/9/07.]

(a) Mail notice of the availability of solicitation documents ("notice") to entities that have expressed an interest in department

procurements;

- (b) Place notice on the state of Washington's electronic procurement system; or
- (c) Place notice on the department's and the commission's internet web site.

(2) **Method of publication.** The department shall furnish notice for every solicitation for proposals by any method that meets the requirements of law, including:

- (a) Mail notice of the availability of solicitation documents ("notice") to entities that have expressed an interest in department procurements;
- (b) Place notice on the state of Washington's electronic procurement system;
- (c) Place notice on the department and commission's internet web site;
- (d) Advertising - the department shall publish the advertisement for proposals at least once in at least one newspaper of general circulation in the area where the contract is to be performed, in at least one trade newspaper or publication of general statewide circulation and in as many additional issues and publications as the department may determine to be necessary or desirable to foster and promote competition.

(3) **Publication contents.** All advertisements for proposals shall set forth:

- (a) The scheduled closing, that shall not be less than five days after the date of the last publication of the advertisement;
- (b) The date that entities must file applications for prequalification if prequalification is a requirement and the class or classes of work for which entities must be prequalified;
- (c) The nature of the work to be performed or the goods to be purchased;
- (d) The office where any documents related to the solicitation may be reviewed;
- (e) The name, title and address of the department employee authorized to receive proposals; and
- (f) If applicable, that the contract is for a public work subject to chapter 39.12 RCW or the Davis-Bacon Act (40 U.S.C. sections 3141 to 3148).

(4) **Posting advertisement for proposals.** The department shall post a copy of each advertisement for proposals at the principal business office of the department. A proposer may obtain a copy of the advertisement for proposals upon request from the transportation innovative partnership program office, or on the internet at [www.wsdot.wa.gov](http://www.wsdot.wa.gov).

(5) **Notice to state office of minority and women's business enterprises (OMWBE).** The department shall provide timely notice of all solicitations to the state office of minority and women's business enterprises.

[Statutory Authority: RCW 47.29.030, 07-04-095, § 468-600-110, filed 2/6/07, effective 3/9/07.]

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#### 468-600-200

##### Authority for the state to accept unsolicited proposals — Moratorium.

The commission may not accept or consider any unsolicited proposals before July 1, 2007.

[Statutory Authority: RCW 47.29.030, 07-04-095, § 468-600-200, filed 2/6/07, effective 3/9/07.]

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#### 468-600-210

##### Projects eligible for unsolicited proposals.



Projects that are the subject of an unsolicited proposal must meet the following minimum criteria:

- (1) The project must meet the definition of an "eligible project" under WAC 468-600-015(4);
- (2) The project must not be listed in the registry of projects intended for a competitive solicitation, under WAC 468-600-100;
- (3) The project must be included in the Washington transportation plan or otherwise identified by the commission as being a priority need of the state.

[Statutory Authority: RCW 47.29.030, 07-04-095, § 468-600-210, filed 2/6/07, effective 3/9/07.]

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#### **468-600-215**

##### **Department's management of unsolicited proposals.**

(1) The department may, at any time, select any class, category or description of proposal or an eligible project, including any individual proposal or project, for the purpose of giving priority to the processing and consideration of unsolicited proposals by issuing a written order that declares that the department will give priority to the processing and consideration of unsolicited proposals for certain types of projects (or to a particular proposal), and describes the class or character of the proposals or projects (or the particular proposal or project) that are given priority. The priority order may either specify the term of the priority order, identify the submitted proposals (or proposal) that are subject to the priority order, or provide that the priority order will continue in effect until recalled by a subsequent order of the department.

(2) Commencing on the effective date of the order giving priority, the department may undertake expedited processing and consideration of unsolicited proposals (or a particular unsolicited proposal) for transportation projects of the class, category or description contained in the order. The limited resources of the department, in such cases, will require either the postponement of, or delay in, the processing and consideration of unsolicited proposals for projects that are not within a class, category or description that is subject to a priority order.

(3) By submitting an unsolicited proposal, each proposer thereby waives and relinquishes every claim of right, entitlement or expectation that:

(a) Its proposal will enjoy the benefit of a priority order; and

(b) The processing and consideration of its proposal will not be subject to postponement or delay arising out of the department's issuance of an order that gives priority to another proposal or to proposals for different classes, categories or descriptions of projects.

(4) The department may, by written order, suspend the acceptance and consideration of proposals based on the types, classes, cost ranges, geographic areas of projects, or other factors as determined by the department. The order will specify either the term of the suspension or that the suspension will continue until recalled by a subsequent order of the department.

(5) Commencing on the effective date of the suspension order, the department will refuse to accept unsolicited proposals or unsolicited proposals for projects of the class, category or description contained in the order, and may, as stated in the order, cease further processing and consideration of any such unsolicited proposals then currently under consideration by the department.

(6) By submitting an unsolicited proposal, each proposer thereby waives and relinquishes every claim of right, entitlement or expectation that the processing and consideration of its proposal will not be subject to suspension under this rule.

(7) The state of Washington, the department of transportation, the Washington transportation commission, and their officers and employees, shall have no responsibility or liability of any nature for the preservation, confidentiality or safekeeping of any proposal that is subject to a suspension order under this rule and is submitted to the department while that suspension order is in effect.

[Statutory Authority: RCW 47.29.030, 07-04-095, § 468-600-215, filed 2/6/07, effective 3/9/07.]



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**468-600-220****Submission of unsolicited conceptual proposals.**

- (1) Subject to WAC 468-600-210 through 468-600-215, any private entity or unit of government may submit an unsolicited conceptual proposal for a project to the department for consideration under the transportation innovative partnership program.
- (2) A proposal review fee in the amount prescribed by WAC 468-600-230 must accompany any unsolicited conceptual proposal submitted by a private entity or unit of government.
- (3) The proposer shall submit twenty copies, individually identified, of any unsolicited conceptual proposal in addition to the proposal bearing the signature of the authorized representative. The original proposal, required copies and processing fee shall be delivered to the department.
- (4) The department will consider an unsolicited conceptual proposal only if:
- (a) The proposed project is unique or innovative in comparison with, and is not substantially duplicative of, other transportation system projects included in the state transportation improvement program within the department or, if it is similar to a project in the state transportation improvement program, the proposed project has not been fully funded by the state or any other public entity as of the date the proposal is submitted, or the proposal offers an opportunity to materially advance or accelerate the implementation of the project. Unique or innovative features that may be considered by the department in evaluating such a proposal may include but are not limited to unique or innovative financing, construction, design, schedule or other project components as compared with other projects or as otherwise defined by state rules or regulations; and
- (b) The conceptual phase includes all information required by and is presented in the format set out in WAC 468-600-240. Such information shall include a list of any proprietary information included in the proposal that the proposer considers protected trade secrets or other information exempted from disclosure under either WAC 468-600-605 or RCW 47.29.190.
- (5) The department will not consider an unsolicited proposal for a project involving another state or local government unit of another state unless the department and the appropriate representative of the other state or of the local government unit of the other state have entered into an agreement that permits the acceptance of unsolicited proposals for such a project.

[Statutory Authority: RCW 47.29.030, 07-04-095, § 468-600-220, filed 2/6/07, effective 3/9/07.]

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**468-600-230****Fees to accompany unsolicited proposals.**

(Reserved.)

[Statutory Authority: RCW 47.29.030, 07-04-095, § 468-600-230, filed 2/6/07, effective 3/9/07.]

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**468-600-232****Alternative process authorized.**

When the commission in its sole discretion deems it appropriate to do so given the nature of the proposal, the commission may specify requirements for proposal content, and for criteria and procedures under which the proposals will be evaluated and selected, that are in addition to or in lieu of those provided for in WAC 468-600-240 through 468-600-370. Any alternative process or processes so specified must comply with the requirements of RCW 47.29.010 through 47.29.290. Examples of possible alternative processes include:

- (1) Selecting a proposal for development into a final agreement based on a unitary proposal instead of a two-step conceptual/detailed proposal process; and
- (2) Proposers are ranked and selected based on the qualifications of the major partners, major subcontractors and key persons, which would result in a predevelopment agreement being entered into that authorizes the proposer to fully develop a detailed proposal that would be evaluated pursuant to WAC 468-600-350.



(3) Nothing in this section, nor in these WAC rules, shall be construed to allow proposer conduct or participation in a project that would be prohibited under the Federal Highway Administration's *Conflict of Interest Guidelines*.

These examples are offered for illustrative purposes only, and should not be construed to limit the scope of the state's discretion or authority to develop proposal and evaluation criteria and processes for any project as long as those criteria and processes comply with the requirements of RCW 47.29.010 et seq.

[Statutory Authority: RCW 47.29.030, 07-04-095, § 468-600-232, filed 2/6/07, effective 3/9/07.]

## **468-600-240**

### **Contents and format of conceptual proposals.**

Pursuant to RCW 47.29.170, unsolicited proposals are subject to a two-step process. The first step is to submit the conceptual proposal. If the concept is approved, the commission or department may ask for further information in the form of a fully detailed proposal, which constitutes the second step. An unsolicited or competing conceptual proposal shall include at least the following information, unless waived by the department, separated by tabs as herein described:

#### **(1) TAB 1: Qualifications and experience.**

(a) Identify the legal structure of the private entity or consortium of private entities or of private and public entities (the "team") submitting the proposal. Identify the organizational structure of the team for the project, the team's management approach and how each major partner and major subcontractor identified as being a part of the team as of the date of submission of the proposal fits into the overall team.

(b) Describe the experience of each private entity involved in the proposed project. Describe the length of time in business, business experience, public sector transportation experience, PPP experience, development experience, design-build experience and other similarly sized engagements of each major partner and major subcontractor. The lead entity must be identified.

(c) Provide the names, addresses and telephone numbers of persons within the team who may be contacted for further information.

(d) Include the address, telephone number, and the name of a specific contact person at a public entity for which the private entity or the team or the primary members of the team have completed a development project, public-private partnership project or design-build project.

(e) Include the resumes for those managerial persons within the team that will likely be associated in a significant way with the project development and implementation.

(f) Provide financial information regarding the private entity or team and each major partner that includes, if available, the most recent independently audited financial statement of the private entity or team and of each major partner, and which demonstrates their ability to perform the work and project as set forth in the proposal, including ability to obtain appropriate payment and performance bonds.

(g) Submit executed disclosure forms, prescribed by the department, for the team, each major partner and any major subcontractor.

#### **(2) TAB 2: Project characteristics.**

(a) Provide a topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project.

(b) Provide a description of the eligible project or projects, including all proposed interconnections with other existing transportation facilities or known publicly identified projects.

(c) Describe the project in sufficient detail so the type and intent of the project, the general location of the project, and the communities that may be affected by the project are clearly identified. Describe the assumptions used in developing the project.

(d) List the critical factors for the project's success.



(e) If the proposed project does not conform with the state and regional transportation plans or regional plans, outline the proposer's approach for securing the project's conformity with, or indicate the steps required for, acceptance into such plans.

(f) When a proposed project is sited, in whole or in part, within the jurisdiction of a metropolitan planning organization or area commission on transportation, identify applicable regional and local approvals required for the project.

(g) Provide an explanation of how the proposed transportation project would impact local transportation plans of each affected locality.

(h) Provide a list of public transportation facilities and major apparent public utility facilities that will be crossed or affected by the transportation project and a statement of the proposer's plans to accommodate such facilities.

(i) Describe the role the proposer anticipates the department will have in the development, construction, operation, maintenance, financing, or any other aspect of the eligible project.

**(3) TAB 3: Project financing.**

(a) Provide a projected budget for the project or scope of work based on proposer's prior experience on other scopes of work and projects or other cost projection factors and information.

(b) Include a list and discussion of assumptions (e.g., user fees, toll rates and usage of the facility) underlying all major elements of the plan for the project.

(c) Identify the proposed risk factors relating to the proposed project financing and methods for dealing with these factors.

(d) Identify any significant local, state or federal resources that the proposer contemplates requesting for the project. Describe the total commitment (financial, services, property, etc.), if any, expected from governmental sources; the timing of any anticipated commitment; and its impact on project delivery.

(e) Identify any aspect of the financial model for the project that implicates or potentially implicates restrictions on the use of highway-related revenues under Article II, section 40 of the Washington Constitution (commonly known as the Motor Vehicle Trust Fund), and explain how the financial model avoids conflicting with those restrictions.

(f) Provide a conceptual estimate of the total cost of the transportation project.

**(4) TAB 4: Public support/project benefit/compatibility.**

(a) Identify who will benefit from the project, how they will benefit and how the project will benefit the overall transportation system.

(b) Identify any anticipated government support or opposition, or general public support or opposition, for the project.

(c) Explain the strategy and plans that will be carried out to involve and inform the agencies and the public in areas affected by the project.

(d) Describe the significant social and economic benefits of the project to the community, region or state and identify who will benefit from the project and how they will benefit. Identify any state benefits resulting from the project including the achievement of state transportation policies or other state goals.

(5) All pages of a conceptual proposal shall be numbered. Each copy of the proposal will be bound or otherwise contained in a single volume where practicable. All documentation submitted with the proposal will be contained in that single volume.

(6) A conceptual proposal submitted by a private sector partner must be signed by an authorized representative of the private sector partner submitting the unsolicited conceptual proposal.

(7) The proposer shall include a list of any proprietary information included in the proposal which the proposer considers protected trade secrets or other information exempted from disclosure under WAC 468-600-605.

[Statutory Authority: RCW 47.29.030, 07-04-095, § 468-600-240, filed 2/6/07, effective 3/9/07.]



**Contents and format of detailed proposals.**

If the preliminary conceptual proposal is accepted, the commission or the department may request a detailed proposal. A detailed proposal shall include all information required in the conceptual proposal under WAC 468-600-240, with additional discussion, description and details, and with updates and refinements as necessary to keep the document most current. In addition, the following information must be included, unless waived by the department:

**(1) TAB 2: Project characteristics.**

(a) Provide a detailed description of the eligible project or projects, including all proposed interconnections with other existing transportation facilities or known publicly identified projects. Describe the project in sufficient detail so the type and intent of the project, the general location of the project, and the communities that may be affected by the project are clearly identified. Describe the assumptions used in developing the project.

(b) Identify any significant local, state or federal services or practical assistance that the proposer contemplates requesting for the project. In particular, identify and describe any significant services that will need to be performed by the department such as right of way acquisition or operation and maintenance of the completed project.

(c) Include a preliminary list of all significant federal, state, regional and local permits and approvals required for the project. Identify which, if any, permits or approvals are planned to be obtained by the department.

(d) List the critical factors for the project's success.

(e) Identify the proposed preliminary schedule for implementation of the project.

(f) Describe the assumptions related to ownership, law enforcement and operation of the project and any facility that is part of the project.

(g) Describe the payment and performance bonds, guarantees, letters of credit and other performance security, if any, that the proposer will provide for the project.

(h) Identify any public improvements that will be part of the proposed project that will constitute "public works" under RCW 47.29.020(5), the workers on which must be paid in accordance with Washington's prevailing rate of wage law, chapter 39.12 RCW, and any public improvements the workers on which must be paid in accordance with the federal Davis-Bacon Act, 40 U.S.C. sections 3141 to 3148.

**(2) TAB 3: Project financing.**

(a) Identify the form and amount of any private capital contribution and the entities that will make such capital contributions. If other forms of contribution are proposed, describe the nature of the contributions, the fair market value (if applicable), and whether compensation for such contributions will be sought.

(b) If the proposal would provide for a state-granted franchise to a private concessionaire in exchange for financial consideration, provide the proposer's financial model and all capital costs, operating and maintenance costs (including reconstruction, resurfacing, restoration, and rehabilitation costs), revenues and other data and assumptions that comprise the base case financial model.

(c) Provide an explanation of how funds for the project will be segregated, accounted for and expended in a manner that ensures that any moneys protected under Article II, section 40 of the Washington Constitution be expended exclusively for the purposes authorized under that provision.

(d) Identify, to the extent possible, proposed financing team members, including banks, investment banks, equity investors, credit enhancement providers, bond trustees and legal counsel to the same.

**(3) TAB 5: Special deliverables.**

(a) Provide a statement setting out the plan for securing all necessary real property, including proposed timeline for any necessary acquisitions.

(b) Provide proposed design, construction and completion guarantees and warranties.

(c) Include traffic studies and/or forecasts and related materials that establish project revenue assumptions, including, if any,



user fees or toll rates, and usage of the facility.

(d) Provide such additional material and information as the department may reasonably request.

(4) All pages of a proposal shall be numbered. Each copy of the proposal shall be bound or otherwise contained in a single volume where practicable. All documentation submitted with the proposal will be contained in that single volume.

(5) A proposal submitted by a private sector partner must be signed by an authorized representative of the private sector partner submitting the proposal.

(6) The proposer shall clearly mark any proprietary information included in the proposal which the proposer considers protected trade secrets or other information exempted from disclosure under RCW 47.29.190 and WAC 468-600-605. Any individual page containing material that the proposer considers proprietary must be stamped "proprietary."

[Statutory Authority: RCW 47.29.030, 07-04-095, § 468-600-250, filed 2/6/07, effective 3/9/07.]

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### **468-600-300**

#### **Additional disclosure requirements for proposers of solicited and unsolicited proposals.**

(1) In addition to the disclosure requirements of WAC 468-600-600, the department may impose, after the submission of a proposal, any other special disclosure requirements the department determines to be reasonably necessary to evaluate the expertise, experience, financial backing, integrity, ownership and control of any proposer.

(2) All proposers must provide all the information required by this rule and by the department. All proposers and key persons must complete and submit the required disclosure form within the deadlines set by the department. All proposers and key persons must provide any documents required in the disclosure process, or other documents as determined by the department, or their proposals may be rejected by the department.

(3) The department may reject, or require the supplementation of, a proposal if the proposer has not provided all information required in the disclosure form or if any information provided is not accurate, current or truthful. The failure or refusal of any proposer to properly execute, fully complete, or accurately report any information required by the required disclosure shall be sufficient grounds for rejection of the proposal.

(4) Any change in the status of the proposer, in the identity of any of the key persons, or the addition of any key persons must be reported to the department within thirty days of the known change, and those whose status has changed or who have been added as key persons will be required to submit the required disclosure information. For purposes of this section, a "change in the status of a proposer" means a reorganization of the business structure or corporate structure of the proposer or a major partner, or a change in ownership of the proposer or a major partner amounting to a transfer of over twenty percent of the entity's ownership.

(5) The burden of satisfying the department's disclosure requirements, both in terms of producing the disclosures and assuring their accuracy and completeness, resides with each proposer.

(6) Each proposer, by submitting a proposal, thereby accepts all risk of adverse public notice, damages, financial loss, criticism, harm to reputation or embarrassment that may result from any disclosure or publication of any material or information required or requested by the state in connection with the proposer's submission of a proposal. In submitting a proposal, the proposer expressly waives, on behalf of itself, its partners, joint venturers, officers, employees and agents, any claim against the secretary, the state of Washington, the commission, the department and their officers and employees, for any damages that may arise therefrom.

(7) A public entity that submits a proposal may, prior to submission, request the department to waive the disclosure requirements of this rule with respect to the corporate public entity and its officers. However, if the public entity proposes to enter into or establish a partnership or joint venture with a private sector partner to perform any substantial portion of the proposed project (as opposed to the engagement of only a prime contractor or subcontractors), then disclosure of the private party must be made as if the private party is a proposer, in accordance with this rule.

[Statutory Authority: RCW 47.29.030, 07-04-095, § 468-600-300, filed 2/6/07, effective 3/9/07.]



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**468-600-305****Appointment of evaluation panel.**

The commission shall appoint and direct an evaluation panel to commence a review and evaluation process as directed in this section. At a minimum, the evaluation panel must consist of:

- (1) Department staff;
- (2) An independent representative of a consulting or contracting firm with no interests in the project, whose firm would be precluded from participating in any part of the project;
- (3) An observer from the state auditor's office or the joint legislative audit and review committee;
- (4) A person appointed by the commission; and
- (5) A financial expert.

[Statutory Authority: RCW 47.29.030, 07-04-095, § 468-600-305, filed 2/6/07, effective 3/9/07.]

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**468-600-310****Preliminary review of proposals.**

(1) For solicited proposals, after the close of the proposal period, the department will conduct a preliminary review and certify receipt of those submitted proposals that have met the following criteria:

- (a) The proposal is complete;
- (b) The proposal is responsive; and
- (c) The proposal meets any additional procedural or process requirements prescribed by the state.

Solicited proposals certified by the department under this subsection will be forwarded to the evaluation panel under WAC 468-600-305.

(2) Unsolicited conceptual proposals submitted under WAC 468-600-220 will be reviewed by the evaluation panel, as created and assembled under WAC 468-600-305. The evaluation panel will initially determine whether the conceptual proposal is eligible for evaluation pursuant to WAC 468-600-200 (State's authority to accept unsolicited proposals -- Moratorium); WAC 468-600-210 (Projects eligible for unsolicited proposals) and WAC 468-600-215 (Department's management of unsolicited proposals). If not, the evaluation panel will not proceed further with its evaluation and the department may return the proposal to the proposer. If the conceptual proposal is eligible for evaluation, the evaluation panel will assess:

- (a) Whether the proposal is complete;
- (b) Whether the proposer appears qualified;
- (c) Whether the proposal appears to satisfy the requirements of WAC 468-600-240;
- (d) Whether the project as proposed appears to be technically and financially feasible;
- (e) Whether the project as proposed appears to have the potential of enhancing the state transportation system; and
- (f) Whether the project as proposed appears to be in the public interest.

(3) The evaluation panel will report the results of its evaluation and its recommendation to the commission. The recommendation will not include sensitive business, commercial or financial information or trade secrets as described in WAC 468-600-605.



[Statutory Authority: RCW 47.29.030. 07-04-095, § 468-600-310, filed 2/6/07, effective 3/9/07.]

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**468-600-315****Commission review of unsolicited conceptual proposals.**

Following an assessment by the evaluation panel that an unsolicited conceptual proposal merits further review, the commission will review the recommendation and approve or disapprove the proposal for further evaluation and action by the state. If approved for further review, the commission shall direct the proposer to prepare a detailed proposal pursuant to WAC 468-600-250.

[Statutory Authority: RCW 47.29.030. 07-04-095, § 468-600-315, filed 2/6/07, effective 3/9/07.]

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**468-600-320****Competing proposals.**

(1) If the commission grants approval of a conceptual proposal for further evaluation and review, within thirty days of the commission's approval the department shall provide public notice of the proposed project. This notice shall:

(a) Be published in a newspaper of general circulation and upon such electronic web site providing for general public access as the department may develop for such purpose;

(b) Be provided to any county, city, metropolitan service district, or transportation district in which the project will be located;

(c) Be provided to any person or entity that expresses in writing to the department an interest in the subject matter of the unsolicited conceptual proposal and to any member of the legislature whose house or senate district would be affected by such proposal;

(d) Outline the general nature and scope of the unsolicited conceptual proposal, including the location of the transportation project and the work to be performed on the project; and

(e) Specify the address to which any competing conceptual proposal must be submitted.

(2) The department may also elect to deliver such notice directly to any person or entity the department believes may have an interest in submitting a competing conceptual proposal.

(3) Any entity that elects to submit a competing conceptual proposal for the proposed project shall submit a written letter of intent to do so not later than thirty calendar days after the department's initial publication of notice. Any letter of intent received by the department after the expiration of the thirty-day period shall not be valid and any competing conceptual proposal submitted thereafter by a private or governmental entity that has not submitted a timely letter of intent shall not be considered by the department.

(4) An entity that has submitted a timely letter of intent must submit its competing conceptual proposal to the department not later than one hundred twenty calendar days after the department's initial publication of notice under subsection (1) of this section, or such other time as the department provides in the notice. The competing conceptual proposal must:

(a) Be signed by an authorized representative of the proposer;

(b) Be accompanied by the processing fee for conceptual proposals required under WAC 468-600-230; and

(c) Include the information and be organized in the manner required of an unsolicited conceptual proposal under WAC 468-600-240.

(5) Any competing conceptual proposal that is received within the time provided in subsection (4) of this section must be forwarded to the evaluation panel as provided in WAC 468-600-310. The panel must:



(a) Evaluate the competing conceptual proposal under the criteria specified in WAC 468-600-310; and

(b) Determine whether the competing proposal(s) differ from the original unsolicited conceptual proposal in such a significant and meaningful manner that they should be treated as an original unsolicited conceptual proposal. If the evaluation panel believes that a proposal submitted as a competing proposal should be treated as an original unsolicited conceptual proposal and that it satisfies the requirements of WAC 468-600-240, the evaluation panel shall forward the proposal to the commission for preliminary review and approval under WAC 468-600-315, and the proposal shall thereafter be processed under these rules in the same manner as an unsolicited conceptual proposal. If the competing conceptual proposal is not to be treated as an original unsolicited conceptual proposal, the competing conceptual proposal will be reviewed by the evaluation panel as provided in WAC 468-600-330 through 468-600-350.

[Statutory Authority: RCW 47.29.030, 07-04-095, § 468-600-320, filed 2/6/07, effective 3/9/07.]

#### **468-600-330**

##### **Proposal evaluation factors and criteria.**

For solicited proposals, the evaluation panel shall assess the certified proposals based on the unique project-specific evaluation criteria identified in the solicitation documents, including any written amendments or clarifications thereto, and upon any other factors the panel believes is necessary to ensure a successful project that benefits the public interest.

For unsolicited and competing proposals, the evaluation panel must consider the following factors:

(1) **Qualifications and experience.** Has the proposer created a team that is qualified, managed, and structured in a manner that will enable the team to complete the proposed project and perform the proposed scope of work?

(a) **Experience with similar infrastructure projects.** Have members of this team previously worked together or in a substantially similar consortium or partnership arrangement constructing, improving, operating, maintaining or managing transportation infrastructure? Has the lead firm managed, or any of the member firms worked on, a similar public-private partnership project?

(b) **Demonstration of ability to perform work.** Does the team possess the necessary financial, staffing, equipment, and technical resources to successfully complete the project and perform the proposed scope of work? Do the team and/or member firms have competing financial or workforce commitments that may inhibit success and follow-through on this project?

(c) **Leadership structure.** Is one firm designated as lead on the project? Does the organization of the team indicate a well thought out approach to managing the project? Is there an agreement/document in place between members?

(d) **Project manager's experience.** Is a project manager identified, and does this person work for the principal firm? If not, is there a clear definition of the role and responsibility of the project manager relative to the member firms? Does the project manager have experience leading this type and magnitude of project?

(e) **Management approach.** Have the primary functions and responsibilities of the management team been identified? Have the members of the team developed an approach to facilitate communication among the project participants? Has the firm adequately described its approach to communicating with and meeting the expectations of the state?

(f) **Financial condition.** Is the financial information submitted on the forms sufficient to determine the firms' capability to fulfill its obligations described in the project proposal, and is that capability demonstrated by the submitted information?

(g) **Project ownership.** Does the proposal identify the proposed ownership arrangements for each phase of the project and clearly state assumptions on legal liabilities and responsibilities during each phase of the project?

(h) **Competitive subcontracting.** To what extent have adequate procurement policies been adopted by the proposer to ensure opportunities for competitive procurement of work, services, materials and supplies that the proposer will subcontract?

(2) **Project characteristics.** Is the proposed project technically feasible?

(a) **Project definition.** Is the project described in sufficient detail to determine the type and size of the project, the location, all proposed interconnections with other transportation facilities, the communities that may be affected, and alternatives (e.g., alignments) that may need to be evaluated?



(b) **Proposed project schedule.** Is the time frame for project completion clearly outlined? Is the proposed schedule reasonable given the scope and complexity of the project?

(c) **Quality management.** Does the proposer present a quality management plan, including quality control and quality assurance processes, that are good industry practice and are likely to result in delivery of a project and services that meet the department's standards and comply with contract requirements?

(d) **Operation.** Does the proposer present a reasonable statement setting forth plans for operation of the project or facilities that are included in the project?

(e) **Technology.** Is the proposal based on proven technology? What is the degree of technical innovation associated with the proposal? Will the knowledge or technology gained from the project benefit other areas of the state or nation? Does the technology proposed maximize interoperability with relevant local and statewide transportation technology? Can the proposed project upgrade relevant local technology?

(f) **Conforms to laws, regulations, and standards.** Is the proposed project consistent with applicable state and federal statutes and regulations, or reasonably anticipated modifications of state or federal statutes, regulations or standards? Does the proposed design meet applicable state and federal standards?

(g) **Federal permits.** Is the project outside the purview of federal oversight, or will it require some level of federal involvement due to its location on the National Highway System or Federal Interstate System or because federal permits are required? Does the proposal identify the primary federal permits and agencies that will be involved in review and oversight of the project?

(h) **Meets/exceeds environmental standards.** Is the proposed project consistent with applicable state and federal environmental statutes and regulations? Does the proposed design meet applicable state environmental standards? Does the proposal adequately address air quality issues?

(i) **State and local permits.** Does the proposal list the required permits and provide a schedule for obtaining them? Are there known or foreseeable negative impacts arising from the project? If so, does the proposal outline a plan to address those negative impacts? Are alternatives to standards or regulations needed to avoid those impacts that cannot be addressed?

(j) **Right of way.** Does the proposal set forth a method or plan to secure all property interests required for the transportation project?

(k) **Maintenance.** Does the proposer have a plan to maintain any facilities that are part of the proposed transportation project in conformance with department standards? Does the proposal clearly define assumptions or responsibilities during the operational phase including law enforcement, toll collection and maintenance? Under the proposal, will maintenance and operation of any new facilities be consistent with standards applied throughout the highway system and use the same work forces and methods?

(3) **Project financing.** Has the proposer provided a financial plan that allows access to the necessary capital to make a substantial contribution of nonstate, private sector, or other innovative financing resources to the financing of the facility or project?

(a) **Financing.** Did the proposer demonstrate evidence of its experience, ability and commitment to provide a sufficient private-sector contribution or other innovative financing contribution of funds or resources to the project as well as the ability to obtain the other necessary financing?

(b) **Conformance with RCW 47.29.060.** Does the proposed financing plan conform to any requirements of state-issued debt under RCW 47.29.060? If the proposed financing plan is not in conformance, has the proposer committed to seeking any necessary legislative or other state approvals in order to proceed with the financing plan as proposed?

(c) **Financial plan.** Does the financial plan demonstrate a reasonable basis for funding project development and operations? Are the assumptions on which the plan is based well defined and reasonable in nature? Are the plan's risk factors identified and dealt with sufficiently? Are the planned sources of funding and financing realistic? Is the proposer willing to place private capital at risk in order to successfully deliver the project? Does the proposer adequately identify sources of nonstate funding that it anticipates including in the project financing, and does the proposer provide adequate assurance of the availability of those funds and the reliability of the funding sources?

(d) **Estimated cost.** Is the estimated cost of the project reasonable in relation to the cost of similar projects?

(e) **Life-cycle cost analysis.** Does the proposal include an appropriately conducted life-cycle cost estimate of the proposed



project and/or facility? How does the life-cycle cost impact the projected rate of return?

(f) **Financial model.** If the procurement is for a concession agreement, does the proposal present a sound base case financial model? Are the assumptions in the financial model reasonable and realistic?

(g) **Business objective.** Does the proposer clearly articulate its reasons for pursuing this project? Do its assumptions appear reasonable?

(4) **Public support.** Has the proposer demonstrated sufficient public support for the proposed project or proposed a reasonable plan for garnering that support?

(a) **Community benefits.** Will this project bring a significant transportation and economic benefit to the community, the region, and/or the state? Are there ancillary benefits to the communities because of the project?

(b) **Community support.** What is the extent of known support or opposition for the project? Does the project proposal demonstrate an understanding of the national and regional transportation issues and needs, as well as the impacts this project may have on those needs? Is there a demonstrated ability to work with the community? Have affected local jurisdictions expressed support for the project?

(c) **Public involvement strategy.** What strategies are proposed to involve local and state elected officials in developing this project? What level of community involvement is contemplated for the project? Has the proposer articulated a clear strategy for informing and educating the public and for obtaining community input throughout the development and life of the project?

(5) **Project compatibility.** Is the proposed project compatible with, or can it be made compatible with state and local comprehensive transportation plans?

(a) **Compatibility with the existing transportation system.** Does this project propose improvements that are compatible with, or that can be made compatible with, the present and planned transportation system? Does the project provide continuity with existing and planned state and local facilities?

(b) **Fulfills policies and goals.** Does the proposed project help achieve performance, safety, mobility or transportation demand management goals? Does the project improve connections among the transportation modes?

(c) **Conformity with local, regional and state transportation plans.** Does the project conform with, or can it achieve conformity with, city and county comprehensive plans and regional transportation plans? Does the project conform with, or can it achieve conformity with, plans developed by the commission and any applicable regional transportation plans or local transportation programs? If not, are the steps proposed in the proposal to achieve conformity with such plans adequate and appropriate to provide a high likelihood that the project and the applicable plans can be brought into conformity?

(d) **Economic development.** Will the proposed project enhance the state's economic development efforts? Is the project critical to attracting or maintaining competitive industries and businesses to the region, consistent with stated objectives?

[Statutory Authority: RCW 47.29.030, 07-04-095, § 468-600-330, filed 2/6/07, effective 3/9/07.]

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#### **468-600-331**

##### **Factors for proposals that include tolling.**

If the project financing component of a proposal includes a plan to impose tolls, the evaluation panel shall specifically consider:

(1) The opinions and interests of units of government encompassing or adjacent to the path of the proposed tollway project in having the tollway installed;

(2) The potential impact of the proposed tollway project on local environmental, aesthetic and economic conditions and on the economy of the state in general;

(3) The extent to which funding other than state funding is available for the proposed tollway project and the extent to which resources other than tolls would be required to be established and/or maintained as necessary security to support such a financing;



(4) The likelihood that the estimated use of the tollway project will provide sufficient revenues to independently finance the costs related to the construction and future maintenance, repair and reconstruction of the tollway project, including the repayment of any loans to be made from moneys in the transportation innovative partnerships account created under RCW 47.29.230 or other accounts;

(5) With respect to tollway projects, any portion of which will be financed with state funds or department loans or grants:

(a) The relative importance of the proposed tollway project compared to other proposed tollways; and

(b) Traffic congestion and economic conditions in the communities that will be affected by competing tollway projects; and

(6) The effects of tollway implementation on other major highways in the state system and on community and local street traffic.

[Statutory Authority: RCW 47.29.030, 07-04-095, § 468-600-331, filed 2/6/07, effective 3/9/07.]

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#### **468-600-340**

##### **Proposer presentations.**

At any time during the evaluation process, the evaluation panel may request proposers to make presentations to the panel. Proposers shall be afforded not less than ten business days following written notification from the panel to prepare such presentations. The format of these presentations will include a formal presentation by the proposer, followed by any questions the evaluation panel may have pertaining to the project proposal or the presentation. These meetings will allow the evaluation panel to seek clarification of project elements and complete deliverable requirements, and provide proposers with the opportunity to further explain their proposed projects. If there is an issue to which the proposer is unable to respond during the formal presentation, the evaluation panel may, at its discretion, grant the proposer a reasonable period of time in which to submit a written response.

[Statutory Authority: RCW 47.29.030, 07-04-095, § 468-600-340, filed 2/6/07, effective 3/9/07.]

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#### **468-600-345**

##### **Required supplements or refinements to proposals.**

(1) The department reserves the right to require or to permit proposers to submit, at any time, revisions, clarifications to, or supplements of their previously submitted proposals. The department may, in the exercise of this authority, require proposers to add features, concepts, elements, information or explanations that were not included in their initial proposals, and may require them to delete features, concepts, elements, information or explanations that were included in their initial proposals. A proposer will not be legally bound to accept a request to add to or delete from a proposal any feature, concept, element or information, but its refusal to do so in response to a request by the department shall constitute sufficient grounds for the department to elect to terminate consideration of its proposal.

(2) After the department's opening and review of proposals, the department may issue or electronically post an addendum to the request for proposals that:

(a) Requires proposers to address or add physical features or elements, and information or explanations that were not included in their initial proposals; or

(b) Requires proposers to delete physical features or elements that were included in their initial proposals; or

(c) Change the method by which the department will send any such addendum that it issues by a method other than electronic posting to all proposers to continue in the proposal process; or

(d) Any addendum issued will contain a deadline by which the proposers must submit to the department any additions to, modifications of or deletions from their proposals.



[Statutory Authority: RCW 47.29.030. 07-04-095, § 468-600-345, filed 2/6/07, effective 3/9/07.]

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**468-600-350****Evaluation panel recommendation to commission.**

(1) After reviewing the proposals and hearing presentations from proposers, the evaluation panel will prepare a written determination, based on facts and circumstances presented in the proposals and the presentations, that one or more proposals merit selection and advancement into a contract negotiation phase or to contract execution. In its written determination regarding any proposal, the evaluation panel may specify conditions that it recommends the proposer be required to satisfy before proceeding to contract negotiations. By way of example, such conditions may include, but are not limited to:

- (a) Requiring the proposer to provide additional information or clarification concerning elements or parts of its proposal;
- (b) Requiring the proposer to develop and submit additional information confirming the technical feasibility of the proposed project;
- (c) Requiring the proposer to develop and submit additional information confirming that the proposed project complies with or can be brought into compliance with relevant local and state transportation plans, restrictions on property use, and environmental laws, or that the project and the applicable plans, restrictions and environmental laws can otherwise be brought into conformity;
- (d) Requiring the proposer to commit in writing to the department to undertake good faith efforts to modify or adjust the proposal in specific ways, or to incorporate steps, characteristics or features that the department identifies as necessary or desirable to enhance the feasibility, public acceptance, transportation efficiency, or economy in execution or operation, of the project;
- (e) Otherwise requiring the proposer to develop and present revisions to, or alternatives within, the proposal that will permit the department to obtain best value based on the requirements and evaluation criteria set forth in the notice or request for proposals and based on knowledge obtained by the department by virtue of its review and evaluation of the proposals; and
- (f) Requiring the proposer to enter into an interim agreement, on terms satisfactory to the proposer and the state, under which the proposer will provide services to the department in connection with the development of the proposal or further development of the project, including assistance to the department in obtaining any necessary regulatory approvals.

- (2) The evaluation panel will report its assessments and recommendations to the commission.

[Statutory Authority: RCW 47.29.030. 07-04-095, § 468-600-350, filed 2/6/07, effective 3/9/07.]

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**468-600-355****Commission review and selection of proposals.**

The commission shall review the proposals, the assessments and the recommendations of the evaluation panel. Based on that review, the commission may:

- (1) Select one proposal to advance to execution of a contract or development agreement; or
- (2) Select one proposal to advance to negotiations of a contract or development agreement; or
- (3) Select one proposal to advance to execution or negotiations of a contract or development agreement, subject to the proposer's willingness and ability to satisfy specified conditions; or
- (4) Pursuant to WAC 468-600-360, select more than one proposal from which to conduct competitive negotiations; or to continue competitive negotiations for a specified period of time; or
- (5) Reject all proposals. For purposes of this section, competitive negotiations means negotiations authorized under WAC 468-600-360, for the purposes of refining and arriving at a final selection of a proposer. This term does not refer to negotiations



for a contract or development agreement as provided in WAC 468-600-710.

[Statutory Authority: RCW 47.29.030, 07-04-095, § 468-600-355, filed 2/6/07, effective 3/9/07.]

#### **468-600-360**

##### **Commission's authority to elect competitive negotiations.**

(1) In addition to the commission's ability to exercise any alternative process permitted under WAC 468-600-232, the commission may authorize, at its option, competitive negotiations with more than a single proposer as a means of selecting from among competing proposals submitted under these rules.

Negotiations under this section are part of the proposal evaluation process and do not constitute the negotiation of a project agreement.

(2) The commission may announce its election to conduct competitive negotiations:

(a) In any notice issued for solicited proposals under WAC 468-600-105; or

(b) By written notice, by mail or by electronic means, to the proposers, issued at any time following the state's receipt of proposals under WAC 468-600-220.

(3) In any communication under subsection (2) of this section, or by notice to the proposers issued by mail or by electronic means at any time after the receipt of proposals, the commission may announce that it will initiate competitive negotiations with all proposers who submitted responsive proposals, or only with proposers who qualify to negotiate because the state has determined that their proposals fall within a competitive range.

(4) When the commission elects to negotiate only with proposers within a competitive range, then after the evaluation panel's evaluation of proposals in accordance with the criteria set forth in the notice or request for proposals, the commission will determine the proposers in the competitive range.

(a) For purposes of this subsection (4), the proposers in the competitive range consist of those proposers whose proposals, as determined by the commission in its discretion, have a reasonable chance of being determined the best proposal as the result of the evaluations conducted by the evaluation panel under WAC 468-600-350. In determining which proposals fall within the competitive range, the commission may consider whether its preliminary evaluation of proposals establishes a natural break in the preliminary scores of the proposals that suggests those proposals that are sufficiently competitive to be included in the competitive range.

(b) The department will provide written notice to all proposers, by mail or by electronic means, of the proposals the commission determines to fall within the competitive range. A proposer whose proposal is not within the competitive range may submit a written protest of the commission's evaluation and determination of the competitive range within fourteen calendar days after the date of the department's notice. A proposer's written protest must state facts and argument that demonstrate how the competitive range determination was flawed or how the commission's determination constituted an abuse of discretion. If the department receives no written protest concerning the proposed selection listing within the fourteen calendar day period, then the department will proceed with negotiations with the proposers whose proposals fell within the competitive range.

(c) In response to a timely filed protest, the commission will issue a written decision that resolves the issues raised in the protest. The commission will make its written determination available, by mail or by electronic means, to the protesting proposer and to the proposers falling within the competitive range.

(5) The object of competitive negotiations, which the department may conduct concurrently with more than one proposer or serially, is to maximize the state's ability to obtain best value and to permit proposers to develop revised proposals. Therefore, the negotiations may include, but shall not be limited to:

(a) Informing proposers of deficiencies in their proposals;

(b) Notifying proposers of parts of their proposals for which the department would like additional information; and

(c) Otherwise allowing proposers to develop revised proposals that will permit the state to obtain the best proposal based on the requirements and evaluation criteria set forth in the notice or request for proposals.



(6) The scope, manner and extent of negotiations with any proposer are subject to the discretion of the department. To prevent the disclosure of proposal information to a proposer's competitors, the department shall conduct negotiations with proposers before the nature of the proposals, information about the proposed project, or proposal information have been made public under WAC 468-600-600. In conducting negotiations, the department:

- (a) Shall treat all proposers fairly and shall not engage in conduct that favors any proposer over another;
  - (b) Shall not reveal to another proposer a proposer's unique technology, unique or innovative approaches to project design, management or financing, or any information that would compromise the proposer's intellectual property, trade secrets or sensitive business information; or
  - (c) Shall not reveal to another proposer a proposer's price or pricing information, provided, however, that the department may inform a proposer that the department considers a proposer's price or pricing information to be too high or too low.
- (7) The evaluation panel must further evaluate the proposals subjected to the competitive negotiation process, and recommendations to the commission for their action under WAC 468-600-355.

[Statutory Authority: RCW 47.29.030, 07-04-095, § 468-600-360, filed 2/6/07, effective 3/9/07.]

#### **468-600-365**

##### **Protests of rejection of proposal/award of contract to competitor in competing proposals context.**

(1) At least fourteen calendar days prior to the final selection of the successful proposer in any competitive proposal selection process, the department will give, electronically or otherwise, written notice to all participating proposers of the commission's apparent selection of the successful proposer. A proposer who would be adversely affected by the selection announced in the notice may, within fourteen calendar days after the date of the department's notice, submit to the department a written protest of the selection of the apparent successful proposer.

(2) For purposes of this rule, a protesting proposer is adversely affected by a selection only if the proposer has submitted a responsive competing proposal and is next-in-line for selection. In other words, the protesting proposer must demonstrate that all higher-scoring proposers are ineligible for selection because either:

- (a) The higher-scoring proposals were not responsive to the requirements stated in the department's solicitation documents; or
- (b) The department committed a substantial violation of a provision in the department's notice requesting competitive negotiation, in these rules, or in chapter 47.29 RCW, or otherwise abused its discretion, in evaluating the revised proposals.

(3) A proposer's written protest must state facts and argument that demonstrate how the selection process was flawed or how the commission's selection of the apparent successful proposer constituted an abuse of the commission's discretion. If the commission receives no written protest concerning the proposed selection listing within the fourteen-day period, then the selection of the successful proposer automatically shall become effective on the fifteenth calendar day after the department first transmitted or otherwise delivered its written notice of the apparent successful proposer.

(4) In response to a proposer's timely filed protest that complies with this rule, the commission will issue a written decision that resolves the issues raised in the protest. In considering a timely protest, the commission may request further information from the protesting proposer and from the apparent successful proposer identified in the department's notice issued under subsection (1) of this section. The commission will make its written determination available, by mail or by electronic means, to the protesting proposer and to the apparent successful proposer identified in the department's notice issued under subsection (1) of this section.

[Statutory Authority: RCW 47.29.030, 07-04-095, § 468-600-365, filed 2/6/07, effective 3/9/07.]

#### **468-600-370**

##### **Notification of apparent successful proposer — Prenegotiation activities authorized.**



(1) Upon the commission's selection of a proposal under WAC 468-600-355 and upon expiration of the protest period, the department shall notify the proposer of its intent to execute a contract or development agreement or to enter negotiations on a contract and/or development agreement.

(2) Upon the commission's provisional selection of a proposal subject to satisfaction of conditions, and upon expiration of the protest period, the department shall notify the proposer of the conditions. The proposer shall have a period of time, set forth in the department's notice, but to be at least ten calendar days, from receipt of the department's notification to elect to proceed under specified conditions. If the proposer elects to proceed, the department shall work with the proposer to develop a plan for satisfying the conditions. If the plan entails entry into an interim agreement, the agreement will conform to all relevant requirements of chapter 47.29 RCW and these rules.

(3) After the commission's selection or provisional selection of a proposal, the department and the proposer may confer on any matter pertinent to refinement of the proposal.

[Statutory Authority: RCW 47.29.030. 07-04-095, § 468-600-370, filed 2/6/07, effective 3/9/07.]

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#### **468-600-600**

##### **Public records and public disclosure.**

(1) Upon written request and within the time required under chapter 42.56 RCW, the department shall review such requests, process and provide those records that are not otherwise exempt from disclosure. The department may charge fees as allowed by state law.

(2) On the department's receipt of a request pursuant to chapter 42.56 RCW, for the disclosure of records or information that have been submitted to the department by a proposer under the program authorized by chapter 47.29 RCW, the department will notify the proposer of the request and provide the proposer a reasonable opportunity to demonstrate that all or part of the requested records or information are exempt from disclosure under applicable law recognizing the confidentiality of public records and information. In determining whether the information or records are exempt from disclosure, the department will consider the evidence and objections to disclosure presented by the proposer, but as custodian of the records or information, the department must make the initial determination of the records that may be withheld from disclosure.

(3) An affected proposer who seeks to demonstrate that public records pertaining to it are exempt from disclosure must respond to the department with its evidence and objections within four working days of the department's issuance of notice of the request to the proposer. After considering the proposer's evidence and objections, the department will inform the proposer of its disclosure decision, giving the proposer no fewer than three working days in which to institute appropriate proceedings in its own behalf to protect the proposer's interests in preventing the disclosure or maintaining the confidentiality of the records or information. The proposer shall be exclusively responsible for all costs, expenses and attorney fees incurred in taking any action to prevent the disclosure of information or records under this section. The department shall not make a disclosure of records or information while an action by the proposer to enjoin disclosure thereof is pending.

[Statutory Authority: RCW 47.29.030. 07-04-095, § 468-600-600, filed 2/6/07, effective 3/9/07.]

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#### **468-600-605**

##### **Designation of sensitive business, commercial or financial information and trade secrets.**

(1) The following procedure shall be followed by proposers to designate information as "sensitive business, commercial or financial information" under RCW 47.29.190: Each individual page of a proposal that contains sensitive business, commercial or financial information must be clearly marked "sensitive business, commercial or financial information."

(2) A proposer may desire that certain information be considered "trade secret" information for purposes of applying the public records exemption set out in state law. "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique or process that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. To qualify for that exemption, trade secret information must meet the following criteria:



- (a) Not be the subject of a patent;
  - (b) Be known only to a limited number of individuals within an organization;
  - (c) Be used in a business that the organization conducts;
  - (d) Be of potential or actual commercial value; and
  - (e) Be capable of providing the user with a business advantage over competitors not having the information.
- (3) The following procedures shall be followed by the proposer to designate information as trade secret:
- (a) Each individual page of a proposal, plan or progress report that contains trade secret information must be clearly marked trade secret;
  - (b) Written substantiation describing what information is considered trade secret and why, must accompany the document. The written substantiation shall address the following:
    - (i) Identify which portions of information are claimed trade secret;
    - (ii) Identify how long confidential treatment is desired for this information;
    - (iii) Identify any pertinent patent information;
    - (iv) Describe to what extent the information has been disclosed to others, who knows about the information, and what measures have been taken to guard against undesired disclosure of the information to others;
    - (v) Describe the nature of the use of the information in business;
    - (vi) Describe why the information is considered to be commercially valuable;
    - (vii) Describe how the information provides a business advantage over competitors;
    - (viii) If any of the information has been provided to other government agencies, identify which one(s); and
    - (ix) Include any other information that supports a claim of trade secret.
- (4) Notwithstanding a proposer's designation of information as constituting "trade secret," and subject to a proposer's opportunity to object to disclosure under WAC 468-600-605, the department may independently assess whether the trade secret exemption applies when responding to a public records request.

[Statutory Authority: RCW 47.29.030. 07-04-095, § 468-600-605, filed 2/6/07, effective 3/9/07.]

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#### **468-600-700**

##### **General preconditions for entering into agreements.**

The following are preconditions of any agreement that will be entered into between the state and a private sector partner:

- (1) The department must seek to adopt contracting techniques that represent the best practices in use by owners of facilities;
- (2) To the extent permitted by law, protection must be provided for local contractors to participate in any subcontracting opportunities on projects;
- (3) Projects that use tolling technology must maintain standards that are consistent with any standards adopted or widely used by the state;
- (4) Provision must be made for patrolling and law enforcement on state-owned transportation facilities, as approved by the Washington state patrol for facilities within their jurisdiction;

(5) Any debt to be issued to pay for the construction of a state-owned transportation facility that is secured by public funds must conform to RCW 47.29.060, or if not in conformance, any agreements reached must be conditioned upon obtaining necessary legislative approval of alternative financing provisions;

(6) The public involvement plan must provide that all forums, workshops, open houses or public meetings be administered and attended by the public sector partner; and

(7) Any project with a capital cost in excess of three hundred million dollars must establish an advisory committee, consisting of at least five but not more than nine members, who shall be appointed by the commission.

[Statutory Authority: RCW 47.29.030. 07-04-095, § 468-600-700, filed 2/6/07, effective 3/9/07.]

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#### **468-600-710**

##### **Negotiation of agreement.**

A proposal or proposals selected by the commission for negotiation of a final agreement shall be referred to a negotiation team within the department. The team shall be responsible for negotiating the final agreement with the proposer. Each final agreement will define the rights and obligations of the state and the respective proposer with regard to the project. Agreements must contain all provisions in WAC 468-600-700 and 468-600-715, and must allocate responsibilities under WAC 468-600-720.

[Statutory Authority: RCW 47.29.030. 07-04-095, § 468-600-710, filed 2/6/07, effective 3/9/07.]

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#### **468-600-715**

##### **Mandatory terms of agreements.**

Any final agreement must include the following provisions:

(1) If public moneys are used to pay any costs of construction of public works that is part of an eligible project, the construction contract shall contain provisions that require payment of workers under the contract in accordance with chapter 39.12 RCW; and

(2) Any maintenance provisions on a public facility must be provided in a manner consistent with collective bargaining agreements, the Personnel Reform Act, and civil service laws in effect on any portion of the project that constitutes a public facility.

[Statutory Authority: RCW 47.29.030. 07-04-095, § 468-600-715, filed 2/6/07, effective 3/9/07.]

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#### **468-600-720**

##### **Terms to be negotiated between the parties.**

Any final agreement must contain terms that address at least the following issues:

(1) At what point in the transportation project public and private sector partners will enter the project and which partners will assume responsibility for specific project elements;

(2) How the partners will share management of the risks of the project;

(3) How the partners will share the costs of development of the project;

(4) How the partners will allocate financial responsibility for cost overruns;

(5) The consequences for nonperformance;



(6) The incentives for performance;

(7) The invoicing and payment procedures and schedules to be followed to the extent that the department or state is to pay for the work, and the accounting and auditing standards to be used to evaluate work on the project; and

(8) An agreement for the construction of a public improvement as part of an eligible project shall provide and be approved for bonding, financial guarantees, deposits or the posting of other security to secure the payment of laborers, subcontractors and suppliers who perform work or provide materials as part of the project. Furthermore, the department shall determine that adequate security exists to address any default or nonperformance by the private sector partner or other contractual claims of the department against the proposer; and

(9) For projects that revert to public ownership, responsibilities for reconstruction or renovation that bring the facility up to government standards before reversion to the state.

[Statutory Authority: RCW 47.29.030. 07-04-095, § 468-600-720, filed 2/6/07, effective 3/9/07.]

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#### **468-600-722**

##### **State objection to subcontractors.**

(1) Prior to the execution of any contract with a proposer, the proposer must provide the department with a list of all major subcontractors who will perform work in the construction, operation or maintenance of the project. All subcontractors must be legally eligible to perform or work on public contracts under federal and Washington law and regulations. No subcontractor will be accepted who is ineligible to receive public works contracts in the state of Washington.

(2) If the department has reasonable objection to any proposed subcontractor, the department is authorized to require, before the execution of a contract, an apparently successful proposer to submit an acceptable substitute. In such case, the proposer must submit an acceptable substitute, and the contract may, at the department's discretion, be modified to equitably account for any difference in cost necessitated by the substitution. The department will set a maximum time period from the date of the department's written demand for substitution within which to make an acceptable substitution. A proposer's failure to make an acceptable substitution at the end of the time period will constitute sufficient grounds for the department to refuse to execute a contract, without incurring any liability for the refusal. In setting a maximum time period, the department shall consider the scope of the subcontract, availability of other subcontractors, and whether the disapproved subcontractor is identified in the proposal as an equity contributor or source of other financial support to the project relied on by the proposer. Following such identification, the proposer shall be granted an additional maximum time period as determined by the department to conclude negotiations of acceptable terms and conditions with that substitute major subcontractor.

(3) The department may not require any proposer to engage any subcontractor, supplier, other person or organization against whom the proposer has reasonable objection.

[Statutory Authority: RCW 47.29.030. 07-04-095, § 468-600-722, filed 2/6/07, effective 3/9/07.]

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#### **468-600-725**

##### **Cessation of negotiations.**

The department must establish a maximum time period allowed for conducting negotiations on a potential project or development agreement(s). Such time period may be established in the solicitation document described in WAC 468-600-105, or as a condition of selecting a particular proposer or proposers. If the department elects to conduct competitive negotiations under WAC 468-600-360, any deadline established for conducting negotiations must be equitably applied to all proposers engaged in negotiations. The department may extend a maximum negotiating time period if it determines extension to be in the interests of the state.

[Statutory Authority: RCW 47.29.030. 07-04-095, § 468-600-725, filed 2/6/07, effective 3/9/07.]



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**468-600-730****Legal sufficiency review of final agreement.**

On completion of a final agreement, the attorney general will review it for legal sufficiency. The department and the transportation commission are wholly responsible for exercising business judgment, including the appropriate and desirable allocation of risk and incentive in any agreement.

[Statutory Authority: RCW 47.29.030. 07-04-095, § 468-600-730, filed 2/6/07, effective 3/9/07.]

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**468-600-735****Commission analysis required.**

Before any agreements are executed, the commission must:

- (1) Conduct a financial analysis that fully discloses all costs and cost estimates, including the costs of any financing, and all estimated project revenues; and
- (2) Compare the department's internal ability to complete the project that documents the advantages of completing the project as a public-private partnership versus solely as a public venture.

The commission may undertake this analysis at any point in the solicited or unsolicited proposal process.

[Statutory Authority: RCW 47.29.030. 07-04-095, § 468-600-735, filed 2/6/07, effective 3/9/07.]

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**468-600-740****Publication of contents of proposed agreement.**

If a tentative agreement has been reached, before the commission may take any action on such agreement, an executive summary describing all material elements of the agreement must be prepared and made available to the public. The department must publish notice of existence of the agreement in each county that is, or could potentially be, affected by the project. The published notice must generally describe the nature of the project, the anticipated communities that the project might impact, and how summary level information on the proposed agreement can be obtained. Such notice must be provided not less than twenty calendar days before the public hearing required under WAC 468-600-741.

[Statutory Authority: RCW 47.29.030. 07-04-095, § 468-600-740, filed 2/6/07, effective 3/9/07.]

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**468-600-741****Public hearings on proposed project and agreement.**

Prior to taking action on any tentative agreement, the commission must hold an informational session and public hearing in the county seat of the boundaries of the proposed project with at least twenty calendar days' advance notice. Notice of such meeting may be provided in conjunction with the publication of the notice under WAC 468-600-740.

[Statutory Authority: RCW 47.29.030. 07-04-095, § 468-600-741, filed 2/6/07, effective 3/9/07.]

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**468-600-742****Twenty-day period for consideration and evaluation of public comments.**

After holding the public hearing required in WAC 468-600-741, the commission must consider any testimony received, and must wait at least twenty calendar days before taking any action approving, rejecting or directing execution or continued negotiations of the agreement.

[Statutory Authority: RCW 47.29.030. 07-04-095, § 468-600-742, filed 2/6/07, effective 3/9/07.]

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**468-600-750****Commission review of final agreement.**

On completion of the attorney general's legal sufficiency review of the final agreement, and after considering any public comment received, the commission shall:

- (1) Approve the final agreement;
- (2) Reject the final agreement; or
- (3) Return the final agreement to the team for further negotiation on issues the commission specifies.

[Statutory Authority: RCW 47.29.030. 07-04-095, § 468-600-750, filed 2/6/07, effective 3/9/07.]

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**468-600-800****Program expenses attributable to projects.**

The department shall confer with its internal auditor and accounting staff to adopt a methodology to properly apportion program and project development expenses to the specific projects that are the subject of an agreement executed under WAC 468-600-750. The department shall forward the methodology for properly allocating program expenses to the office of financial management for review and approval.

[Statutory Authority: RCW 47.29.030. 07-04-095, § 468-600-800, filed 2/6/07, effective 3/9/07.]

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**468-600-810****State's reservation of rights.**

(1) The state reserves all rights available to it by law in administering these rules, including without limitation, the right in its sole discretion to:

- (a) Reject any and all proposals at any time;
- (b) Terminate evaluation of any and all proposals at any time;
- (c) Suspend, discontinue and/or terminate comprehensive agreement negotiations with any proposer at any time prior to the actual authorized execution of such agreement by all parties;
- (d) Negotiate with a proposer without being bound by any provision in its proposal;
- (e) Request or obtain additional information about any proposals;

- (f) Issue addenda to and/or cancel any RFQ or RFP;
  - (g) In accordance with the rule-making procedures of chapter 34.05 RCW, supplement or withdraw all or any part of these rules;
  - (h) Decline to return any and all fees required to be paid by proposers hereunder; and
  - (i) Request revisions to proposals.
- (2) Absent express written provisions contained in any solicitation document, order or written policy issued by the department, the department is not liable for, or required to, reimburse the costs incurred by proposers, whether or not selected for negotiations, in developing proposals or in negotiating agreements. Any and all information the department makes available to proposers shall be as a convenience to the proposer and without representation or warranty of any kind.

[Statutory Authority: RCW 47.29.030, 07-04-095, § 468-600-810, filed 2/6/07, effective 3/9/07.]





## Roles and Responsibilities

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The Washington State Transportation Commission provides a public forum for transportation policy development. It reviews and assesses how the entire transportation system works across the state and issues the state's 20-year Transportation Plan. As the State Tolling Authority, the Commission adopts tolls for state highways and bridges and fares for Washington State Ferries.

### Contact:

Reema Griffith, Executive Director  
360-705-7070

### Key Facts

- The Commission is a seven member body of citizens appointed by the Governor for six-year terms. The Secretary of the Washington State Department of Transportation and a representative from the Governor's Office are *ex officio* members of the Commission.
- As a public forum for transportation policy development, the Commission develops and issues a comprehensive and balanced 20-year statewide transportation plan that reflects the priorities of government and addresses local, regional and statewide needs. It proposes transportation policy for the state and coordinates state transportation planning with national transportation policy and with local/regional land use and transportation plans.
- The Commission conducts a statewide outreach program to gather input into state transportation policy, to promote transportation education, and to gain understanding of local and regional transportation needs and challenges. The Commission reports its findings in an annual report to the Governor and Legislature.
- The Commission is designated the State Tolling Authority and as such, adopts all state highway and bridge tolls as well as setting fares for Washington State Ferries.
- Supplemental policy tasks assigned to the Commission by the Legislature include:
  - Oversight of the Transportation Innovative Partnership Program
  - Conducting a ferry user market survey every two years
  - Reviewing the long-range ferry system capital plan and operating strategies, and adopting ferry system pricing policies.
  - Naming state transportation facilities.
  - Administering the route jurisdiction transfer program which includes reviewing requests and making final recommendations to the Legislature.

### Current Responsibilities in Detail

#### **Washington Transportation Plan**

Every four years, the Commission recommends to the Legislature a comprehensive and balanced statewide transportation plan. The plan must be consistent with the state's growth management goals and be based upon transportation policy goals adopted by the Legislature. The plan is required to reflect the priorities of government and address local, regional and statewide needs, including multimodal transportation planning. The next updated plan is due December 2014.

#### **State Ferry Fare & State Highway Toll Responsibilities**

- The Commission is the state's tolling authority, adopting tolls for the SR 520 Bridge, the Tacoma Narrows Bridge, the SR 167 HOT Lanes pilot project, and any future authorized toll facilities.
- The Commission reviews and adjusts the state ferry system fare schedule and adopts fare and pricing policies.

- The Commission reviews the long-range ferry system capital plan and operational strategies.

### **Ferry Customer Survey**

The Commission is required to conduct a ferry customer survey every two years. Data gathered is used to help inform level of service, operational, pricing, planning, and investment decisions for the state ferry system.

### **Policy Guidance**

The Commission offers policy guidance and recommendations to the Governor and the Legislature in key issue areas including but not limited to:

- Transportation finance and funding.
- Preserving, maintaining, and operating the statewide transportation system.
- Transportation infrastructure needs.
- Transportation efficiencies that will improve service delivery and intermodal coordination and connectivity.
- Improved planning and coordination among transportation agencies and providers.
- Use of intelligent transportation systems and other technology based solutions.
- Climate change initiatives and challenges facing transportation.

### **Public Involvement & Outreach**

The Commission conducts its public outreach program primarily through meetings held in both Olympia and localities throughout the state each year. Meetings held outside of Olympia focus on local and regional transportation issues and challenges, receiving information from local officials, public agencies, and other entities. In addition to regular meetings, the Commission convenes periodic regional forums to gather citizen input on various transportation issues.

### **Transportation Innovative Partnerships (TIP) Program**

The Commission may solicit concepts or proposals for eligible public-private partnership projects. In consultation with the Governor, the Commission may execute, reject or continue negotiations on proposed public-private partnership projects.

### **Route Jurisdiction Transfer Program**

The Commission is required to consider and act upon possible additions, deletions, or other changes to the state highway system. The Commission receives, reviews, and evaluates petitions from cities, counties, or the WSDOT requesting changes to the state highway system. Once the review is done, the Commission makes a final finding and forwards its recommendation to the Legislature for final action in law.

### **Studies & Projects Completed in the 2009-11 Biennium**

- Updated the Washington Transportation Plan – a 20-year vision for statewide transportation.
- Conducted a comprehensive system-wide ferry customer survey.
- Completed a report on non-toll public-private partnerships which includes recommendations on streamlining PPP laws for the purpose of non-toll projects.
- Completed a report assessing the feasibility of selling the naming rights to Washington State Ferries.
- Completed a report on regional priority transportation projects.
- Completed an analysis and business plan for implementing a ferry fuel surcharge.

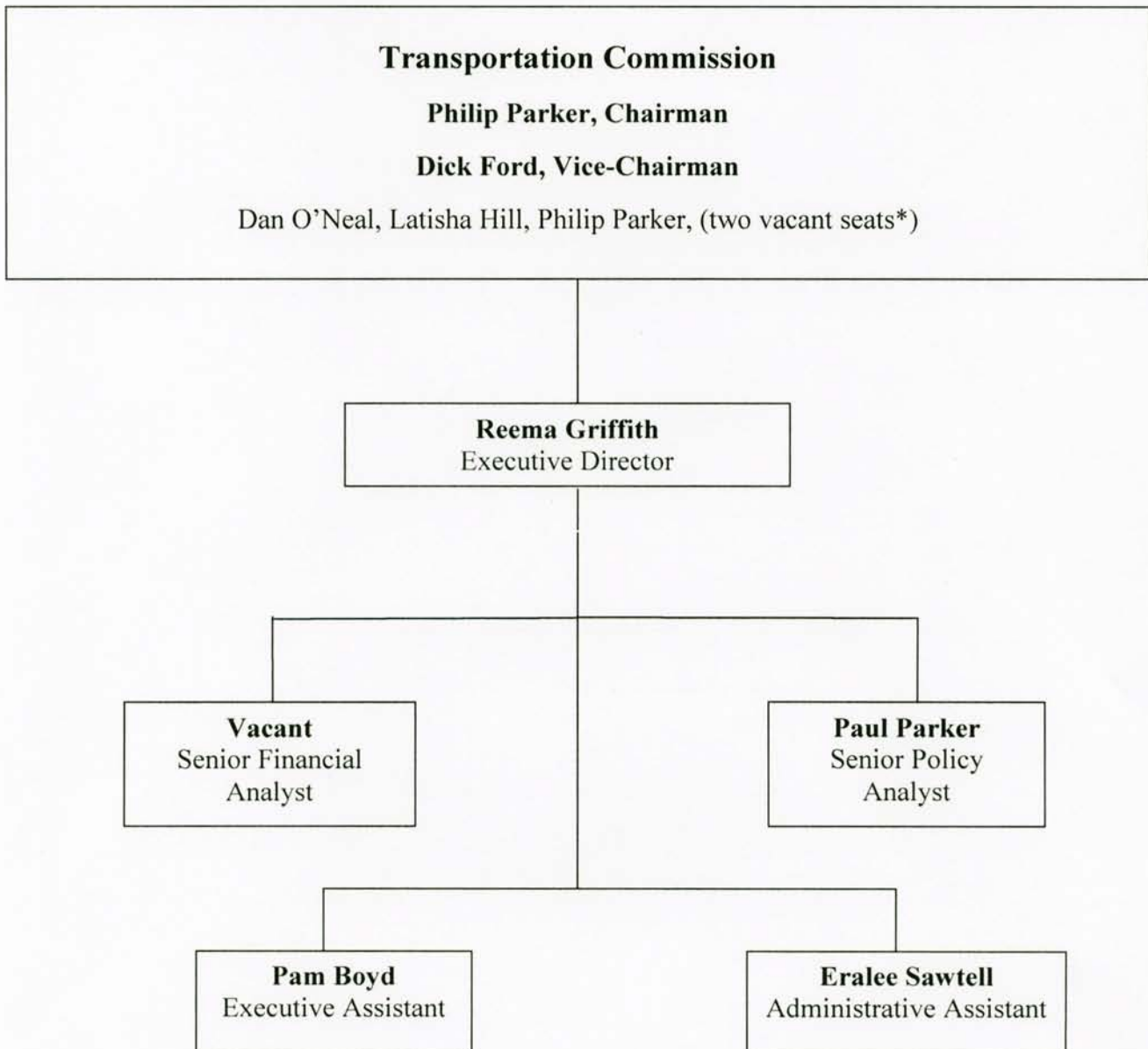
### **Studies & Projects Completed in the 2007-09 Biennium**

- Conducted a comprehensive system-wide ferry customer survey.
- Completed the long-term ferry funding study which included long-term funding recommendations.
- Conducted a detailed analysis of tolling options for specific routes and structures, as a follow-up to the Commission's Comprehensive Tolling Study completed in 2006.
- Held a Regional Transportation Summit to address governance and funding for regional transportation needs in the Spokane area.



**WASHINGTON STATE  
TRANSPORTATION COMMISSION**  
***2010 ORGANIZATIONAL CHART***

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*\*As of October 1 and December 1, 2010*

## **Appendix D. Role of WSDOT's Transportation Partnerships Office.**

The Transportation Partnerships Office concentrates activities in four key areas:

### **Consultation and Advisory Services**

The Transportation Partnerships Office serves as a resource to public officials for alternative financing techniques and innovative project development. To provide this expertise, professional staff stays informed on laws, regulations, and programs affecting transportation financing and explores emerging trends and techniques used to develop transportation projects in the U.S. and around the world.

The Transportation Partnerships Office consults with both private industry and other public officials on the potential for public/private partnerships to help advance specific transportation projects. Consultations can be conducted in commercially-confidential meetings well in advance of any specific proposals for project development.

The Office also provides project development advice to agency administrators, project engineers, and elected or appointed officials in the executive and legislative branches as requested.

### **Analysis and Assessment**

The Transportation Partnerships Office is committed to ensuring that public/private partnerships deliver value to the public. The first step in the project development process involves an analysis and assessment of the potential benefits, costs, and risks associated with a potential project. Transportation projects that are extremely complex or unusual sometimes require the specialized expertise of outside consultants or advisers.

Analysis and assessment are conducted formally when specific funding is provided for such evaluations and, less formally, as professional staff continually explore and investigate new ideas and opportunities to advance transportation projects, programs, and priorities. Two recent examples of formal analysis and assessment include **Ferry Terminal Joint Development Opportunities Analysis** and **Alternative Fuels Corridor Economic Feasibility Analysis**.

Less formally, the Transportation Partnerships Office provides analysis and assessment of whether a public/private partnership arrangement can provide significant additional funding (or other benefits) for transportation mega-projects. A recent example is an analysis of the PPP funding potential for the SR 520 Bridge Replacement and HOV project (see [Reports, Studies, and Presentations](#) on the Transportation Partnerships Office web site). The Office continues to provide these services to mega-project teams throughout the state.

### **Project Development**

If public value can be gained, potential public/private partnership projects can be advanced to the project development phase. The Transportation Partnerships Office is responsible for carrying



out the new Transportation Innovative Partnership (TIP) Program, which is a formal process for the state to solicit, review, negotiate, and execute public/private partnership agreements for transportation projects. Final approval for projects developed under the TIP Program rests with the Washington State Transportation Commission, as required under RCW 47.29.

Not all transportation partnership projects must be developed under the TIP Program. In some instances, WSDOT has legal authority to enter into agreements with other public or private partners to develop transportation projects. Recent examples of public/private partnerships developed under other statutory powers include land leases with cellular phone companies, management of for-pay parking facilities, and retail restaurant and other commercial enterprises at ferry terminals.

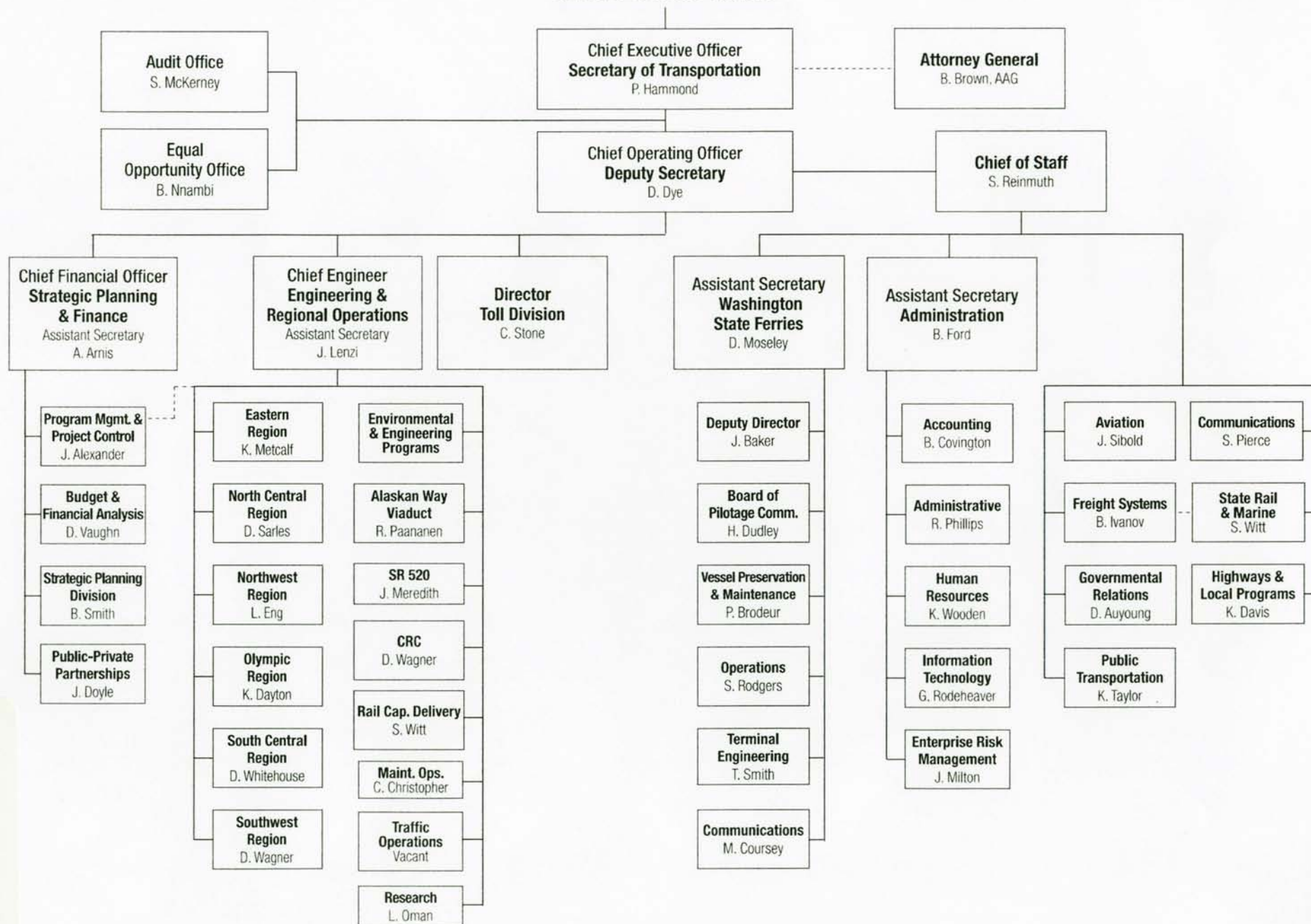
Projects that are not initiated by the state but rather proposed by other public or private parties, are known as unsolicited proposals. The Transportation Partnerships Office is responsible for carrying out the unsolicited proposal review process mandated in RCW 47.29 and WAC 468-600. At this time, a moratorium is in effect on the state's ability to review and take action on unsolicited proposals.

For more information on projects currently under development, see Active Projects and Studies on the Transportation Partnerships Office web site, at <http://www.wsdot.wa.gov/Funding/Partners/Default.htm>.

## **Liaison and Representation**

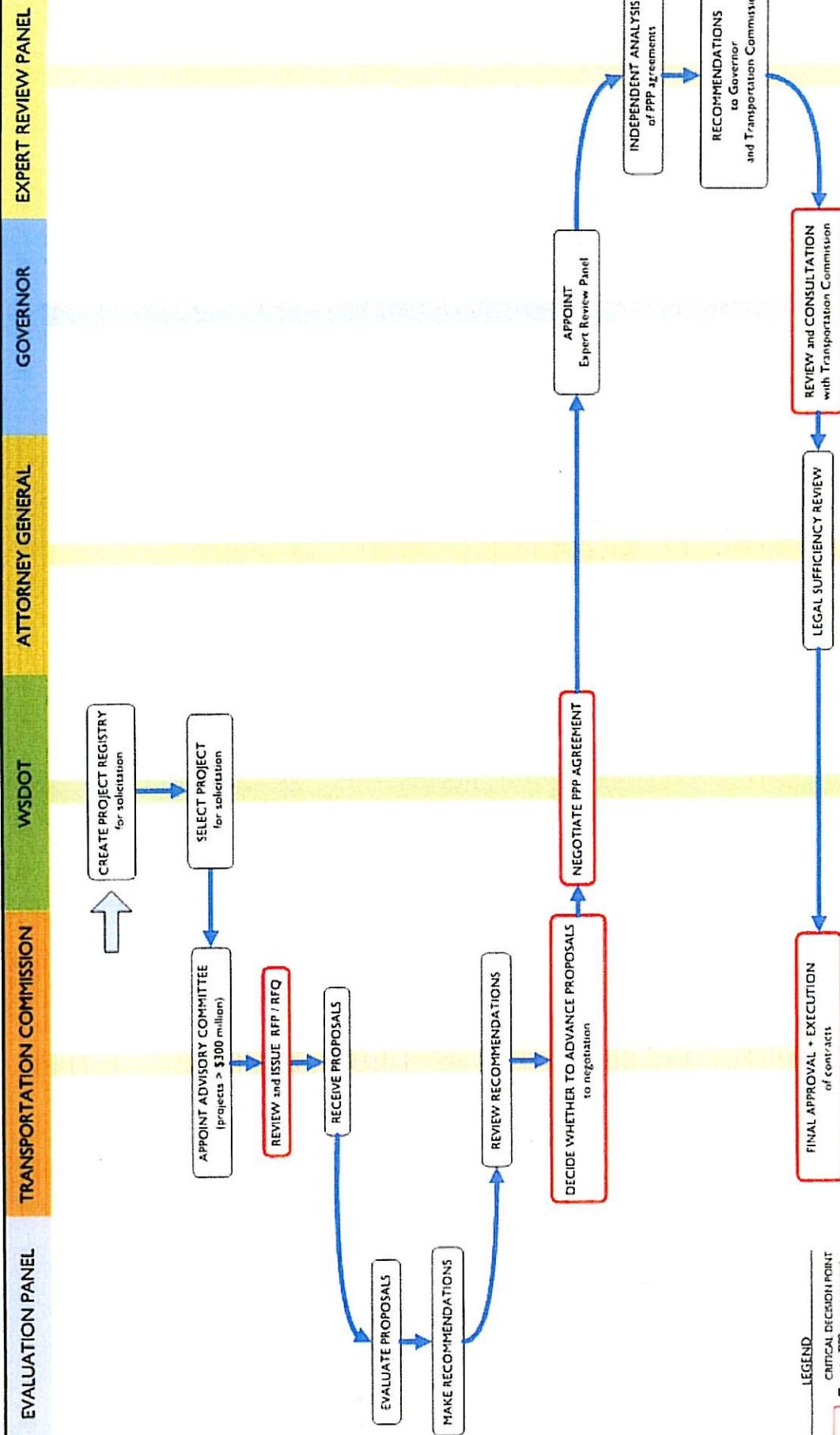
The Transportation Partnerships Office serves as a conduit between the State of Washington and the private sector for the development of transportation public/private partnership projects. The Office provides information, helps explain state laws, policies and programs to the private sector, and serves as a path-finder for entities seeking to do business with WSDOT.

The Office also maintains contact and serves as a resource on transportation public/private partnerships to elected and appointed officials within state and local government. Professional staff participates in national associations and summits, serve on expert panels, provide information and make public presentations, and represent the interests of Washington state within the field of transportation public/private partnerships.





# TIPP Project Agreements: Approval Process



LEGEND  
 CRITICAL DECISION POINT  
 = in the TIPP project approval process

**FIRST DRAFT**

***Examples of Non-Toll Public Private Partnership (P3) Projects in Washington State and Best Practices: Synthesis***

Prepared for  
Jeff Doyle  
Director

WSDOT Office of Innovative Partnerships  
Washington State Department of Transportation

Prepared by  
Kathy Lindquist, WSDOT Research Office  
Mike Wendt, WSDOT Library

June 17, 2010

Transportation Synthesis Reports (TSRs) are brief summaries of currently available information on topics of interest to WSDOT staff. Online and print sources may include newspaper and periodical articles, NCHRP and other TRB programs, AASHTO, the research and practices of other state DOTs and related academic and industry research. Internet hyperlinks in the TSRs are active at the time of publication, but host server changes can make them obsolete.

**Request for Synthesis**

Jeff Doyle, Director, WSDOT Innovative Partnerships Office, requested information on examples of non-toll public private partnerships (P3's) road projects primarily in Washington State. WSDOT's Public/Private Partnerships Office is assisting the Transportation Commission with their review of the laws and rules governing Washington State's Transportation Innovative Partnership (TIP) Program and research the programs and best practices currently in use by other government agencies with experience in non-toll road and other types of PPP projects.

This Synthesis includes examples of other city, county, and regional PPP projects in Washington State such as downtown development, wastewater, arts, and energy for comparison.

**Databases Searched:**

- TRIS Online
- Research in Progress
- Previous Synthesis Reports
- Google
- Wisconsin DOT Transportation Synthesis Reports
- FTA website
- FHWA website
- Washington State Municipal Research Services
- Washington State Department of Commerce
- Washington State Treasurer's Office

**Background Publications**

Infrastructure Projects



## **Bond Cap Allocation and Community Renewal**

Washington State Department of Commerce Website, 2010

2009 Infrastructure Assistance Coordinating Council Conference Presentation (PDF)

Presentations from the Recovery Act Bond Finance Opportunities Conference, July 31, 2009

<http://www.commerce.wa.gov/site/305/default.aspx>

## **The Bond Cap Allocation Activity Summary and Policy Report 2010: Including Recovery Act Impacts and 2009 Project Detail**

Washington State Department of Commerce, 2010

This report highlights recent federal changes and discusses the policy impacts, including the need for Commerce to adopt rules and the potential need for legislative action, under consideration at this writing in the form of ESHB 2753.

Issues discussed in the report that impact Bond Cap Allocation Program policy include:

- The Housing and Economic Recovery Act of 2008
- The American Recovery and Reinvestment Act of 2009
- Build America Bonds
- Recovery Zone Bonds
- Recovery Zone Economic Development Bonds
- Recovery Zone Facility Bonds
- Qualified Energy Conservation Bonds
- Continued demand for housing cap
- Commerce's rule adoption (WAC 365-135)
- Potential amendments to the bond cap statute (RCW 39.86)

Several of the new bond types, in particular Build America Bonds and Recovery Zone Economic Development Bonds have been very well received in the bond market. As a result, Congress is considering not only extending several of the new bond types, but also enacting additional new bond types. In the state legislation currently under consideration (ESHB 2753) is making the bond cap statute language more inclusive so that Commerce is able to implement new bond types as Congress enacts them. This will allow Commerce to act quickly and efficiently to make the new bond tools available to our communities for economic development and recovery.

<http://www.commerce.wa.gov/DesktopModules/CTEDPublications/CTEDPublicationsView.aspx?tabID=0&ItemID=8511&Mid=490&wversion=Staging>

## **Financing Infrastructure for Less with Traditional and ARRA Bond Finance Tools**

Washington State Department of Commerce, Presentation at IACC Conference, October 15, 2009.

Project Examples:

- City of Roslyn
- Grand Fir Lodge at Suncadia, Roslyn/Cle Elum

Exempt Facilities:

- Van Der Haak Dairy, Lynden
- Cedar Grove Composing, Maple Valley

Housing:

- Esther Short Commons, Vancouver
- Plum Meadows, Vancouver
- Holly Apartments, Seattle

Small Issue Stories:

- SCAFCO Corporation, Grain Systems Division, Spokane, WA
- Absorption Corporation, Ferndale

Competitive Application Criteria:

- Jobs, jobs, jobs
- Estimated energy savings (QECBs)
- Energy innovations (QECBs)
- Readiness to issue bonds
- Other financing leveraged
- Amount of community support
- Number of individuals benefitting from project
- Geographic and demographic diversity

<http://www.commerce.wa.gov/DesktopModules/CTEDPublications/CTEDPublicationsView.aspx?tabID=0&ItemID=7854&Mid=484&wversion=Staging>

## Economic Development

### **Community Economic Revitalization Board (CERB)**

Washington State Community Economic Revitalization Board (CERB), Website 2010

The Community Economic Revitalization Board (CERB) is Washington's strategic economic development resource, focused on creating and retaining jobs in partnership with local government. CERB finances public infrastructure to encourage new development and expansion in targeted areas.

<http://www.choosewashington.com/business/financing/revitalization/Pages/default.aspx>

### **Public-Private Partnerships for Economic Development**

By Caitlin Geary and Christiana McFarland, National League of Cities, 2008

Although economic development is a cornerstone of local government activity, it certainly is not immune to budgetary constraints and the broader economic downturn. Many cities are exploring alternative ways to facilitate and finance local economic development, and some are turning to public-private partnerships (PPPs) to get the job done.

Public-private partnerships allow cities to pursue economic development while shifting part of the risk, reward, and financial burden to the private sector. According to the National Council for Public-Private Partnerships, a PPP is defined as a contractual agreement between a public agency (federal, state or local) and a private sector entity where the skills and assets of each sector (public and private) are shared in delivering a service or facility for the use of the general public.

In the case of economic development, PPPs are used most often to develop commercial properties, parking facilities, hotels, urban renewal projects, and many others.

<http://www.nlc.org/ARTICLES/articleItems/NCW060710/publicprivatepartnerships.aspx>

### **Focus Archive - Economic Development**

Municipal Research Services 2010

(Please note that Focus section links were valid at the time of their original posting. However, since Web sites and addresses change frequently, we cannot guarantee that all links will remain operative. )

<http://www.mrsc.org/focus/focusarcsbj.aspx?sid=1#3415>

## Washington State Economic Development PPP



## **Downtown Development Return on Investment Study**

Economic Development, Downtown Vancouver, WA, 2006

City of Vancouver Website, 2010

**Downtown Development Return on Investment Study** This study presents the result of an analysis of the return on the City of Vancouver's investment in downtown Vancouver economic development. The analysis includes City investments made between 1997 and 2006, investments planned for 2007 and related costs in future years.

### **Executive Summary**

- The total public investment in downtown Vancouver economic development supporting development initiated between 1997 and 2006 is estimated at \$54.6 million discounted to a present value in 2006.
  - The total City of Vancouver investment in downtown Vancouver economic development supporting development initiated between 1997 and 2006 is estimated at \$26.9 million. This amount excludes investments using restricted funds such as City sales taxes dedicated to transportation capital, Community Development Block Grant awards or Federal transportation grants.
  - The State of Washington investment in the Vancouver Convention Center is estimated at \$27.7 million.
- The total State and local tax revenue attributed to the developments supported by the public investment from 1997 through 2025 is estimated at \$163.6 million discounted to a present value in 2006.
  - The total City of Vancouver tax revenue generated through 2025 is estimated at \$26.7 million. City tax sources include property, sales, utility, real estate excise and State shared lodging taxes.
  - The total tax revenue generated through 2025 for Clark County, the Port of Vancouver, The Fort Vancouver Regional Library, C-TRAN and the Vancouver School District is estimated at \$23.9 million.
  - The total State of Washington tax revenue generated through 2025 is estimated at \$113.0 million (2006 NPV). State tax sources include sales, business & occupation, property, utility, and real estate excise taxes.
  - The total net revenue benefit, after subtracting the likely tax benefits from development without public support and adding the impact of the sale of the VancouverCenter and West Coast Bank parking garages, is \$133.5 million discounted to a present value in 2006.
  - The total net benefit to the City of Vancouver is estimated at \$27.0 million, the total net benefit to other local jurisdictions is estimated at \$19.2 million and the total net benefit to the State of Washington is estimated at \$87.2 million.
- The rate of return to the City of Vancouver from its investment in downtown Vancouver economic development is estimated at 4.3% or roughly equivalent to the City's return on its invested funds.
  - The net present value of the City's investments combined with the City's net benefit is positive.
  - The estimated return on investment is 11.0 percent after including the net benefit to the City and all other local jurisdictions in Clark County.
- The overall net present value of the State of Washington's investment and net benefit is \$59.4 million in 2006 net present value terms. The State's percentage return on investment is not reportable since the State's cash flow is positive in each year.
- The overall rate of return on the combined City and State investment in downtown Vancouver economic development is 35.9 percent and is much higher than the City's return due to the large State net benefit.
- The total estimated new construction cost of the public and private development directly related to the City's investments is estimated at \$200 million with a total private investment estimated at between \$250 million and \$300 million.



- The estimated public investment leverage ratio associated with the City's investments is 9.3:1 while the overall public investment leverage ratio is estimated at 4.6:1.
- The public and private development directly related to public investments generated other economic benefits to the community.
  - The total on-going employment attributed to the new development is estimated at 1,474 jobs.
  - The total employment attributed to the construction of the new development is estimated 489 jobs.
  - The total annual economic activity directly attributed to the new development is estimated at \$135 million.
  - An estimated \$110,000 per year in new funding for the Southwest Washington Convention and Visitors Bureau.
- The new development directly supported the goals of the City's Comprehensive Plan and the Esther Short Subarea and Redevelopment Plan.
  - The development directly supported ten of the Comprehensive Plan's Economic Development and Housing policies.
  - The development generated between 45 percent and 75 percent of the targets for jobs, commercial development and housing included in the Esther Short Subarea and Redevelopment Plan.

<http://www.cityofvancouver.us/econdev.asp?menuid=10464&submenuID=10525&itemID=27263>

### **Waterfront Redevelopment PPP, Vancouver, WA**

Economic Development - Business & Economic Development, City of Vancouver, Website, 2010

Development of the Vancouver waterfront will reconnect 35 acres along the Columbia River to the city's historic core, creating a vibrant community for all to explore.

The development will cultivate a diversity of new uses: residences and offices blending with restaurants, shops and hotels; public parks and open spaces inviting residents, neighbors, and visitors to come together.

#### **Benefits**

Waterfront redevelopment supports the Vancouver City Center Vision Plan and will

- Facilitate \$1.3 billion in private reinvestment
- Leverage public funding at a 30:1 ratio (\$30 private to each \$1 for public infrastructure)
- Meet Vancouver's master plan call for 1 million square feet of new professional office, retail and hospitality space
- Fuel upward of 12,000 construction jobs and 2,500 permanent jobs
- Generate new state and local tax revenue.

As outlined in the VCCV Plan, the city envisions a total revitalization of Vancouver's urban waterfront focusing on residential uses supported by significant public access, recreation, cultural, hospitality, entertainment and limited commercial uses.

<http://www.cityofvancouver.us/econdev.asp?menuid=10464&submenuID=10525&projectID=18840>

### **Riverwest Mix-Use Development, Vancouver, WA**

Economic Development, City of Vancouver, WA Website, 2010

Riverwest is a \$165 million public-private mixed use development that includes four multi-story buildings. In addition to the new main library of the Fort Vancouver Library system, Riverwest will offer a new civic plaza, 200 multi-family residences, 100,000 square feet of offices, 17,000 square feet of retail, a boutique hotel and a 900-stall underground parking garage. Water features, public art and greenspaces will also be featured in this project.



<http://www.cityofvancouver.us/econdev.asp?menuid=10464&submenuID=10525&projectID=26994>

#### **Vancouver Convention Center PPP**

Economic Development, City of Vancouver, Washington Website, 2010

The Vancouver Convention Center and Hilton Hotel is the only publicly-owned convention center and four-star hotel in the Pacific Northwest. Because of its superior environmental design, the facility received an international award from Travel and Leisure magazine and was also recognized in the New York Times and numerous trade publications as well as on CNN and MSNBC. The convention center and hotel is especially attractive to regional corporate, public, family, non-profit and environmental groups. Gray's at the Park, the facility's upscale restaurant, is enjoyed by Vancouver visitors and residents alike.

Located at Downtown Vancouver at 6th and Columbia (south of Esther Short Park)

<http://www.cityofvancouver.us/econdev.asp?menuid=10464&submenuID=10525&projectID=18839>

#### **West Barracks Downtown PPP, Vancouver, WA**

Economic Development, City of Vancouver, Washington Website, 2010

The federally-established Vancouver National Historic Reserve is often considered the birthplace of history in the Western United States.

Hoping to revive the area, the Vancouver National Historic Reserve partners including the City of Vancouver, National Parks Service, State of Washington, U.S. Army and the Vancouver National Historic Reserve Trust are working with private sector partners to renovate 16 historic buildings on the West Barracks for a variety of uses, from education and the arts to recreation and hospitality.

The West Barracks includes a fully-restored 1919 Red Cross Building that is now used as a reception hall and for classroom space. Other historic structures on the barracks include Barnes Hospital, the Artillery Barracks and the Infantry Barracks.

<http://www.cityofvancouver.us/econdev.asp?menuid=10464&submenuID=10525&projectID=18843>

#### **Washington Wind Energy PPP**

#### **Treasury Grant, Innovative Financing Help Build Huge Washington Wind Farm**

By Eric Lindeman, Energy Daily Network, June 15, 2010

In the largest grant to date under the Recovery Act program, the Treasury Department has awarded San Diego-based Cannon Power Group slightly over \$200 million for its Windy Point/Windy Flats project in the Columbia River Gorge in Washington State. Currently . . .

[http://www.theenergydaily.com/ced/wind/Treasury-Grant-Innovative-Financing-Help-Build-Huge-Washington-Wind-Farm\\_4555.html](http://www.theenergydaily.com/ced/wind/Treasury-Grant-Innovative-Financing-Help-Build-Huge-Washington-Wind-Farm_4555.html)

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[http://www.theenergydaily.com/ced/wind/Treasury-Grant-Innovative-Financing-Help-Build-Huge-Washington-Wind-Farm\\_4555.html](http://www.theenergydaily.com/ced/wind/Treasury-Grant-Innovative-Financing-Help-Build-Huge-Washington-Wind-Farm_4555.html)

#### Washington State PPP Wastewater Projects

##### **CH2M HILL Seattle Cedar Water Treatment Facility (Water Infrastructure)**

2006 NCPPP Infrastructure Award Winner

Project Location: Seattle, WA

Public Sector Partner: Seattle Public Utilities Contact Name: Chuck Clarke, 206.684.5851 Private

Sector Partner: CH2M HILL Contact Name: Jim West, 425.255.7238, [jwest1@omiinc.com](mailto:jwest1@omiinc.com)

Project Summary: Seattle Public Utilities (SPU) is one of only a few major metropolitan water utilities in the United States that doesn't filter all its water. While the city obtains a majority of its water supply from a pristine, 90,500 acre watershed, changing water regulations required SPU to consider either installing a \$200 million filtration system or looking into alternatives to filtering their water.

Historically, SPU's water was treated only with chlorine, corrosion control chemicals, and fluoride. Having faced a similar challenge in the past, SPU turned to a design-build-operate (DBO) approach to help them manage the water treatment for the Cedar River Watershed water.

Thanks to a partnership with CH2M HILL and its operations and maintenance business unit, CH2M HILL, Seattle-area residents now receive even higher quality drinking water that has been treated with state-of-the-art ozonation and ultraviolet (UV) treatment. The new Cedar Water Treatment Facility is among the first - and is the largest facility in the U.S. - to combine the technologies to treat drinking water, ensuring that SPU's customers continue to receive high-quality water for the best price. The new facility provides enhanced treatment that exceeds current and future water quality standards and improves taste and odor. CH2M HILL's contracted scope included design, permitting, material and equipment procurement, construction, onsite inspection, start-up, commissioning, and operations (for up to 25 years) of the facility.

<http://www.ncppp.org/cases/cedarwater.shtml>

##### **Vancouver, WA, Wastewater Treatment Project**

2000 NCPPP Project Award Winner Public Sector Partner: City of Vancouver, Washington

Contact Name: Tom Boyer, Assistant City Engineer, 360.696.8008 Private Sector Partner: Veolia

Water North America Contact Name: Christie Kaluza, 800.522.4774

[christie.kaluza@veoliawaterna.com](mailto:christie.kaluza@veoliawaterna.com)

##### **Project Summary**

Vancouver, a community set within the scenic beauty of the Northwest and proud of its responsive government and vibrant economy, has entrusted Veolia Water North America (formerly USFilter Operating Services, Inc.) to develop customized solutions to meet its changing wastewater needs for a quarter century.

The relationship has grown with the community's needs and now includes the management of three separate wastewater treatment facilities and additional pump stations. This partnership has fostered the following for Vancouver:

An experienced operations company assuming full responsibility for compliance and environmental issues; A guarantee to meet or exceed all permit requirements and correct any problems with no cost to the city; A fixed contract price for the term of the agreement; Significant cost savings; State and national recognition for outstanding safety, environmental and performance achievements; and The ability to focus on the community's current issues and concerns, rather than city officials having to deal with the ongoing management of its wastewater facilities.

<http://www.ncppp.org/cases/vancouver.shtml>



## Washington State Arts Projects

### **Using Arts to Revitalize the Core of a Metropolitan Region: Innovative Public-Private Partnerships: City of Seattle/King County, Washington**

US Conference of Mayors Website, 1997

Innovative public-private partnerships and shared resources have driven the success of Seattle's arts-oriented economic development. Within the past decade, the City of Seattle, King County, the State of Washington, and the private sector have invested a total of \$240 million in flagship cultural facilities at the heart of the city. At capacity, these facilities draw 10,000 people per night into the downtown, filling restaurants, shops, parking facilities, and most importantly, ensuring a bustling and safe downtown well into the night. The downtown also hosts a number of small and start-up arts groups and commercial art galleries. Collectively, the arts in Seattle generated more than \$150 million annually in economic activity, and created 8,200 full- and part-time jobs in 1992.

Seattle has garnered the title as one of the country's most livable cities. Mountains, water, and a near-mythical relationship with coffee accent the popularity of the city, but the heart of its success is an extraordinarily vital downtown.

... Political and business leaders both looked to the arts as a catalyst for sustained growth, with investment in the city's cultural facilities as a central strategy to economic redevelopment.

The results of this revitalization of downtown have been remarkable:

- Businesses have built an additional 11 million square feet of new office space, with another 4 million square feet under construction.
- The city's 29 million square feet of office space is now 95 percent occupied.
- Downtown is now home to 2,300 retail businesses, with hundreds more on the way.
- Twenty-two percent of the city's general fund revenues come from the downtown retail core.

... Use of these taxes for the arts has produced a strong and synergistic relationship, since construction of new arts facilities promotes the tourism on which this revenue stream relies.

Through a variety of mechanisms, the City of Seattle has backed its commitment to enhance the vitality of its downtown through the arts. With contributions of cash and in the transfer of development rights, the city has dedicated approximately \$45 million to construction of cultural facilities downtown.

The State of Washington, working on an initiative by the Corporate Council for the Arts and The Boeing Company, created the Building for the Arts program in 1991. This prestigious program provides state funds for up to 15 percent of the total capital cost for selected arts facilities. Over four legislative budget cycles, Building for the Arts has authorized nearly \$30 million for about 60 arts projects around the state, including \$10 million for three arts facilities in the heart of Seattle's downtown.

The corporate community has provided pivotal support, supporting an average of 15 to 25 percent of the overall cost of construction for these facilities. The corporate sector also has provided leadership, with CEOs of some of the region's largest companies heading the drives for new facilities.

As a result of these investments, five major new or renovated facilities now form downtown Seattle's cultural nucleus: the Seattle Art Museum, the Fifth Avenue Theatre, Paramount Theatre, A Contemporary Theatre, and the new Benaroya Concert Hall, completed in autumn 1998.

How the Partnership Is Paying Off



Already a prominent feature in the downtown landscape, Benaroya Hall's construction budget of \$109 million exemplifies strong public-private partnership. The City of Seattle is the project's largest single supporter, with commitments of \$41 million. The state has provided \$8 million through the Building for the Arts program; the county has provided \$3 million; and corporations, foundations and individuals are making up the balance.

Construction expenditures for the hall already are creating business sales of \$180 million in the state, as well as 1,700 direct and indirect jobs. Once it opens, expenditures by the hall and its half-million annual patrons will yield \$46 million in business sales statewide.

Kreielsheimer Place, the new downtown home of A Contemporary Theatre (ACT), was completed in 1996. The project combines the renovation of a historic landmark, creation of three new theatre spaces, and construction of 44 units of affordable housing. In this innovative project, ACT collaborated from the start with Housing Resource Group-Seattle to provide affordable housing, which is in high demand in the city. About 10 percent of the project's \$30 million price tag went to construction of apartment units. This combined use made the project very attractive to both public and private funders.

The State of Washington, the building's previous owner, launched the project by transferring the site and structure to ACT. With further strong support from the corporate and public sectors, the building has become a downtown destination, attracting audiences of 90,000 annually. Its success in combining affordable housing, theatres, and historic preservation recently earned the facility an Urban Landmark Institute award. . .

[http://www.usmayors.org/bestpractices/bp97/12\\_1997\\_Using\\_Arts\\_To\\_Revitalize.htm](http://www.usmayors.org/bestpractices/bp97/12_1997_Using_Arts_To_Revitalize.htm)

## Best Practices

### **Public-Private Partnerships for Economic Development (2008) (CEDCP and DEBT) Government Finance Officers Association—Best Practice 2008**

**Background.** The term "public-private partnership" ("partnership") encompasses many different types of projects. Governments and government finance officers need to understand the different risks and rewards associated with various public-private partnership endeavors. Traditionally, the term "public-private partnership" has referred to private or public-private projects that involve the use of public resources or financing capabilities to promote local economic development. In those arrangements, the public entity is typically asked to provide some combination of tax incentives, public land or other assets, infrastructure investments or financing methods.

In consideration of those public contributions, the private entity is asked to make capital investments, commit to provide jobs, contribute development expertise and assume financial risk. These "partnerships" (which typically are not partnerships legally) can have short life spans covering only the construction period for the project, or longer life spans covering debt repayment or long-term operating agreements.

<http://www.gfoa.org/downloads/PublicPrivatePartnershipsFINAL.pdf>

### **Best Practices on Contract Design in Public-Private Partnerships**

Report prepared for the World Bank, by Elisabetta Lossa, Giancarlo Spagnolo, Mercedes Vellez, September, 2007

Report includes Best Practices in risk allocations, payment mechanisms, flexibility and negotiation, contract duration, other contractual issues, and transparency and confidentiality in PPP contract design.

<http://www.gianca.org/PapersHomepage/Best%20Practices%20on%20Contract%20Design.pdf>



## State PPP Information

### **FHWA Office of Innovative Program Delivery: Public Private Partnerships --P3 Resources** FHWA Website, 2010

Site includes links to a variety of resources related to P3's including:

- Academic Resources
- FHWA P3 Resources
- FTA P3 Resources
- Federal P3 Resources
- Foundation P3 Resources
- GAO P3 Resources
- Industry Journals and Periodicals
- International P3 Resources
- P3 Books
- P3 Links
- Rating Agency P3 Resources
- State DOT P3 Resources
- TRB P3 Resources
- World Bank P3 Resources

<http://www.fhwa.dot.gov/ipd/p3/resources/default.htm#fta>

### **AASHTO Center for Excellence in Project Finance—Resources and Links –Featured Resources**

AASHTO Website 2010

AASHTO Center for Excellence in Project Finance—State by State

[http://www.transportation-finance.org/tools/state\\_by\\_state/](http://www.transportation-finance.org/tools/state_by_state/)

[http://www.transportation-finance.org/resources\\_links/](http://www.transportation-finance.org/resources_links/)

### **How States and Territories Fund Transportation: An Overview of Traditional and Nontraditional Strategies**

National Governor's Association, Contact: Gregory Dierkers, Environment, Energy & Natural Resources Division, 2009

The nation's transportation system faces many pressures, including a growing imbalance between system use and system capacity, erosion of traditional funding sources, greater infrastructure costs, and shrinking sources of credit resulting from the current economic crisis. In response, states and territories are actively exploring how they can make better use of existing and new approaches to fund and finance transportation. This report provides states with an overview of traditional funding mechanisms, profiles of new and innovative programs at work in the United States and overseas, and a summary of each state's surface transportation funding approaches. The report covers state-driven mechanisms only and is meant to help states identify strategies to consider in addressing their revenue needs alongside federal and local approaches. <http://www.nga.org/portal/site/nga/menuitem.9123e83a1f6786440ddcbeeb501010a0/?vgnextoid=cd53a7cc13e92210VgnVCM1000005e00100aRCRD>

### **Innovative Financing Options Key to Restoring and Enhancing Nation's Transportation Infrastructure**

New NGA Center Report Cites Challenges, Opportunities for Nationwide Transportation Infrastructure Improvements, 2009



States are at the forefront of operating and maintaining our nation's transportation assets but increasingly need to develop innovative funding and financing strategies to achieve this task, according to a new report issued today by the National Governors Association Center for Best Practices (NGA Center).

The report, *Innovative State Transportation Funding and Financing: Policy Options for States*, outlines the challenges states face in funding transportation needs, and details a number of near- and longer-term policy solutions that states can examine.

The nation's highways, roads, bridges, and transit systems currently are funded by an array of revenue sources, including fuel taxes, vehicle user fees, transit fares, impact fees, bonds, property and sales taxes, and general funds. However the total annual investment in surface transportation falls dramatically short of the amount needed to maintain the current system, let alone improve the status of the nation's transportation infrastructure.

<http://www.nga.org/portal/site/nga/menuitem.6c9a8a9ebc6ae07eee28aca9501010a0/?vgnextoid=dcf3c2243e5de110VgnVCM1000005e00100aRCRD>

### **PEW Report: Driven by Dollars: What States Should Know When Considering Public-Private Partnerships to Fund Transportation**

The PEW Center, March 2009

... To help state policy makers across the country understand the information they need to have and the questions they need to answer when considering public-private partnerships to fund infrastructure, the Pew Center on the States used Pennsylvania's experience with PPP's as a case study.

Researchers sought to assess what the state did well and where the process could have been improved. To accomplish this, they interviewed state officials and advisors, legislators, representatives of the bidders and the Turnpike Commission, and transportation and finance experts; reviewed the lease proposal and relevant documents; and researched similar deals in other states and countries.

The report affirms that states considering public-private partnerships should have clear, data driven answers to these questions:

- Does the government have a clear sense of the funding gap in its infrastructure needs?
- Have all revenue options been examined and compared, both with and without private-sector involvement?
- Is there understanding and agreement about the goals of raising revenue and the ways in which dollars will be distributed among projects or needs?
- Has the legislature adopted enabling legislation to signal its willingness to consider a concession agreement with the private sector?

[http://www.pewcenteronthestates.org/uploadedFiles/PA\\_Turnpike\\_FINAL\\_WEB.pdf](http://www.pewcenteronthestates.org/uploadedFiles/PA_Turnpike_FINAL_WEB.pdf)

### **State Legislation Authorizing Public Private Partnerships (PPPs) for Transit**

(As of February 2009)1/ 2/

<http://www.ncppp.org/FTA/EnablingLegislation.pdf>

### **State P3 Legislation**

FHWA, Overview Table, 2009

(Reflects legislative developments through December 2007)

[http://www.fhwa.dot.gov/ipd/p3/state\\_legislation/state\\_legislation\\_overview.htm](http://www.fhwa.dot.gov/ipd/p3/state_legislation/state_legislation_overview.htm)

### **National Council PPP Website—Case Studies of PPP's**



NCPPP Website, 2010

Case Studies from Across the United States: A publication of the case studies available--Case Studies from Across the United States, a publication including a number of case studies offered on NCPPP's Web site. It includes a project summary and most have a picture representing the project. This is an excellent tool to showcase the success of public-private partnerships. Forty-eight pages.

Member: \$40.00

Nonmember: \$50.00

<http://www.ncppp.org/cases/index.shtml#transportation>

(Check WSDOT Library for availability)

### **What is the Appropriate Role for Public-Private Partnerships in Surface Transportation?**

Tolling Points, Publication of IBTTA, Sunday, March 7, 2010

The Congressional Research Service (CRS) of the U.S. Congress recently released an updated version of a report titled "Public-Private Partnerships (PPPs) in Highway and Transit Infrastructure Provision."

According to CRS, "This report describes the wide variety of public-private partnerships in highways and transit, but focuses on the two types of highway PPPs that are generating the most debate: the leasing by the public sector to the private sector of existing infrastructure; and the building, leasing, and owning of new infrastructure by private entities."

<http://ibtta.blogspot.com/2010/03/what-is-appropriate-role-for-public.html>

### **A New Partnership for Local Economic development**

Northeast University, Dukakis Center for Urban and Regional Policy

The National League of Cities and the Dukakis Center for Urban and Regional Policy at Northeastern University are proud to announce a new joint program to assist local municipalities to better position themselves to attract and retain business investment and increase employment.

View the Power Point Presentation:

*Practical Strategies to Attract Economic Development*

*Daniel Spiess*

*Economic Development Partnership*

*Northeastern University*

National League of Cities

First Tier Suburbs Council Steering Committee

Garland, Texas

June 12, 2010

<http://www.economicdevelopment.neu.edu/>

### **GFOA Best Practice: Role of the Finance Officer in Economic Development**

Public-Private Partnerships for Economic Development

NCW 06-07-10, Government Finance Officers Association (GFOA), 2006

Best Practices: The GFOA recommends that finance officers use the following list as a guide for preparing a comprehensive examination of must issues addressed before, during, and after, the project is determined to be viable and prudent. This list emphasizes that a great deal of due diligence must be completed prior to entering into a contract, since these decisions may have significant and long-lasting ramifications. Actions taken, and issues for which procedures and policies should be in place, include:

1. Researching private partners and their business and market;
2. Researching the type of transactions under consideration;
3. Consulting with appropriate professionals about applicable federal and state tax laws;



4. Understanding the rights and obligations of each party;
5. Setting standards for public financial commitments;
6. Evaluating and disclosing the financial and non-financial impacts of the proposals on the public entity; and
7. On-going monitoring of the agreement

The finance officer involved in a "partnership" should ensure full disclosure and make recommendations that the government's participation in the venture does not bring excessive and unbalanced risk to the public. Preparing a comprehensive list of potential issues that may affect the government, and assuring that the government has sufficient in-house and outside expertise to evaluate these issues, will help to ensure that the P3 venture is beneficial to the public as well as the private partners.

<http://www.gfoa.org/downloads/PublicPrivatePartnershipsFINAL.pdf>

#### **Public-Private Partnerships and the Public Accountability Question**

Authors, John Forrer, James Edwin Kee, Kathryn E. Newcomer, and Erin Boyer. Public Administration Review, February 22, 2008.  
(Check WSDOT Library for availability)

#### **Project Evaluation for Public Private Partnerships: Aligning Development with Strategic Goals in Virginia Beach**

By Patricia Phillips, Robert Scott, and Nancy Leavitt, Government Finance Review, GFOA, June 2004.

<http://www.gfoa.org/downloads/ProjectEvaluationforPublic-PrivatePartnerships.pdf>

#### **Issue Brief: Privatization vs. Public Finance Partnerships: A Comparative Analysis**

California Debt and Investment Advisory Committee; August 2007.

The principles behind privatization and P3s are similar—private sector involvement with the delivery of public projects or services. While these terms are often used interchangeably, they have distinct differences that public agencies should weigh when considering them. This issue brief provides basic information on privatization and P3s and identifies shared characteristics and key operational differences. This analysis is intended to assist public agencies in better understanding and evaluating options to deliver public infrastructure projects and related services.

<http://www.treasurer.ca.gov/cdiac/publications/privatization.pdf>

#### Other

#### **The National Council for Public-Private Partnerships**

Website 2010

Welcome to The National Council for Public-Private Partnerships Webpage ABOUT NCPPP The National Council for Public-Private Partnerships is a non-profit, non-partisan organization founded in 1985. The Council is a forum for the brightest ideas and innovators in the partnership arena. Its growing list of public and private sector members, with experience in a wide variety of public-private partnership arrangements, and its diverse training and public education programs represent vital core resources for partnering nationwide. The Council's members bring an unmatched dedication to providing the most productive and cost-effective public services.

Every activity of the Council is geared to enhancing the partnership process from networking events, such as conferences and issue forums, to sharply focused opportunities, such as



Committees, Institutes, the Speakers' Bureau and the Web Site. The benefits of the Council membership are bounded only by the energy of its members, which is vast.

Across the country, governments are being challenged to operate more efficiently and cost-effectively and are turning to an accepted tool for serving public needs. In addition to the resources available to its members, the Council has access to expert consultants providing accurate, timely information to the general public. It advocates partnering, where appropriate, at the federal, state and local levels through formal and informal presentations.

"Public private partnerships are an important option that can be utilized in times of economic uncertainty and in periods of prosperity. There is a nexus between the public sector's needs and the private sector's goals. Local and state governments, particularly in today's challenging economic times, need to find innovative ways to improve infrastructure that makes sense to the taxpayer."

<http://www.ncppp.org/>

### **Top Ten Facts about PPP's** NCPNP Website, 2010

1) Public-private partnerships are just what the name implies.

Public-private partnerships are a contractual arrangement whereby the resources, risks and rewards of both the public agency and private company are combined to provide greater efficiency, better access to capital, and improved compliance with a range of government regulations regarding the environment and workplace. The public's interests are fully assured through provisions in the contracts that provide for on-going monitoring and oversight of the operation of a service or development of a facility. In this way, everyone wins -- the government entity, the private company, and the general public.

2) Public-private partnerships are more common than you may think.

Public-Private Partnerships have been in use in the United States for over 200 years and thousands are operating today. These contractual arrangements between government entities and private companies for the delivery of services or facilities is used for water/wastewater, transportation, urban development, and delivery of social services, to name only a few areas of application. Today, the average American city works with private partners to perform 23 out of 65 basic municipal services. The use of partnerships is increasing because they provide an effective tool in meeting public needs, maintaining a high level of public control, improving the quality of services, and are more cost effective than traditional delivery methods.

3) They are an essential tool in challenging economic times.

Even in the best of times, governments at all levels are challenged to keep pace with the demands of their constituencies. During periods of slow growth, government revenues are frequently not sufficient to meet spending demands, necessitating painful spending cuts or tax increases. Partnerships can provide a continued or improved level of service, at reduced costs. Equally important, partnerships can also provide the capital needed for construction of major facilities. By developing partnerships with private-sector entities, governments can maintain quality services despite budget limitations.

4) Successful partnerships can lead to happy employees.

In many partnerships created today, public employees are retained and usually at equal or improved benefits. One of the greatest areas of improvement for employees is with opportunities for career growth -- private companies spend two to three times more on training and personnel development than their public-sector counterparts, as a way of gaining the maximum efficiency out of every person, and the maximum amount of job satisfaction.

5) Successful partnerships can lead to better public safety.

From Los Angeles to the District of Columbia, local governments have formed creative partnerships with private companies to enhance the safety of its streets and its citizens. By turning over the operation of parking meters or the processing of crime reports to private-sector



partners, police officers can spend more time on the streets doing the jobs for which they are trained. This is particularly important as Home Land Security has risen as a concern for many.

6) Partnerships give many children better educational opportunities.

In Virginia, public-private partnerships were instrumental in constructing over 30 new school buildings. By working with a private real estate development company, city and county school systems were able to build state-of-the-art facilities with a modern computer lab, gym, and library. Often, allowing the private sector to utilize publicly-owned underutilized assets for commercial activities provides a major portion of the funding for these projects. Today, a number of other states are now following this example, driven by the need to address the problem of aging education infrastructures.

7) Drivers appreciate public-private partnerships.

These are not easy times for America's roads and highways. Increasing numbers of vehicles means more roadway wear and tear and increasing traffic congestion. In states like California, Virginia, and Texas, private-sector companies are working with state and local governments to build roads, making it possible to finance construction and upkeep without having to impose general tax increases. While tolling on one means of generating the revenue to cover the investment, in a number of cases Transportation Oriented Development (TOD) of adjacent properties can provide a significant portion of the revenue stream.

8) Clean, safe water is achieved through public-private partnerships.

The stringent health and environmental standards of the Safe Drinking Water Act and Clean Water Act have presented difficulties for some local governments without the budget flexibility to make major capital improvements in water and wastewater facilities. Public-private partnerships have enabled the construction of state-of-the-art water management facilities, while using efficient operations to hold down costs to ratepayers and provide a way of meeting those "un-funded mandates" from the federal government.

9) Partnerships make the information revolution accessible to more Americans.

This is the age of information technologies, but there can be a hefty cost of getting a system operating. Through public-private partnerships, many governments are now able to fully participate in "E-government" with their constituents, or effectively coordinate government activities and budgets. Better service, improved tools, and saving money are exactly what public-private partnerships are all about.

10) Governments themselves are the biggest supporters of public-private partnerships.

While there can be substantial misperceptions about the value of partnerships, a look at who endorses them should clarify the picture. Federal agencies like the Environmental Protection Agency, the Department of Defense, and the Veterans Administration all use partnerships. And the number of state and local governments using this tool is even greater. For example, the U.S. Conference of Mayors is enthusiastically working with private-sector providers to discuss ways to make partnerships more effective. Numerous surveys indicate why -- governments traditionally realize cost savings of 20 to 50 percent when the private-sector is involved in providing services.  
<http://www.ncppp.org/presskit/topten.shtml>



**Public/Private Partnerships:  
Transportation Commission and WSDOT Areas of Interest**

**Organizational Structure and Responsibilities for Developing PPP's:**

1. How does [insert agency] identify potential partnership opportunities? Do you have an office, division or person who is primarily responsible for seeking partnerships (or joint development)?
2. How are you organized to carry out these tasks (if applicable, could you provide an organizational chart, description/mission statement, etc)?
3. What resources are allocated for these purposes (dedicated staff, on-call consultants, program or project funding)?

**Legal Provisions Related to PPP/Joint Development:**

1. Do you have specific laws (state or municipal codes) or administrative rules that govern [insert agency] ability to seek and implement PPP's? (if possible, please provide a cite so we can further research)
2. Have you encountered potentially conflicting or ambiguous laws, codes or rules that had to be reconciled? Some examples might be:
  - a) Procurement: laws that assume/require acceptance of lowest bid, vs. a best-value or best-qualified proposer?
  - b) Public works contracting provisions (Title 39 RCW) that must be reconciled with your contracting process?
  - c) Restrictions on the use and/or disposition of public property (not including permitting or environmental issues), where [insert agency] might find it beneficial to combine or transfer an ownership interest in property?
3. Do you retain outside legal counsel in the development of PPP/joint development projects? Is your legal counsel, whether inside or outside, actively involved in all phases of project development (including pre-development) or are you more likely to seek their advice on a case-by-case basis?

**Soliciting Proposals for Development:**

1. Has [insert agency] solicited for potential partners based solely on qualifications (not project pricing)? What were the benefits, drawbacks and overall experience?
2. Has [insert agency] requested proposals for a project that was highly conceptual, prior to detailed site identification, design, etc.? What were some of the reasons for soliciting at this stage?
3. Does [insert agency] have a means of inviting proposals that are not initiated by your organization (such as, a process for outside parties to submit an unsolicited proposal)? If so, how

would [insert agency] handle an unsolicited proposal that was submitted by a private or other public party?

### **Oversight and Approval of PPP/Joint Development Projects:**

1. Who has the formal legal authority to: (a) issue; (b) review and screen; (c) select; (d) negotiate; and (e) approve public/private partnership proposals?
2. What is your opinion of the formal process for approving such projects? How could it be improved? What would you advise others that would like to establish or revise their review and approval processes?
3. In your experience, is it better for such processes to be administered, overseen and ultimately approved by elected officials, or appointed officials? What role do public meetings play in the proposal review/approval process (separate from the required environmental and land use hearings)?

### **Project-related Funding:**

1. To what extent are the PPP or joint development projects motivated by [insert agency]'s needs to bring private funding to a project?
2. At what stage of a potential partnership do you think its necessary for all project funding sources to be identified?
3. How do you determine whether your prospective private is contributing adequately to the project? (In other words, how do you determine whether a proposal represents the "best deal possible," financially speaking)?
4. Are there circumstances where you might undertake pre-development and procurement activities for a project, even though that project still required additional funding?

### **Internal Alignment & Process:**

1. Has [insert agency name] encountered situations where there was not internal agreement on whether a public/private partnership project should be pursued or developed? If so, what were some of the reasons for lack of agreement?
2. What types of processes or techniques have you used to gain internal support for a project?



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Motor Vehicle Account--State Appropriation . . . . .	(( <del>\$2,237,000</del> ))
	<u>\$2,328,000</u>
Multimodal Transportation Account--State Appropriation . . . .	\$112,000
TOTAL APPROPRIATION . . . . .	(( <del>\$2,349,000</del> ))
	<u>\$2,440,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) Pursuant to RCW 43.135.055, during the 2009-11 fiscal biennium, the transportation commission shall periodically review and, if necessary, modify the schedule of fares for the Washington state ferry system. The transportation commission may increase ferry fares, except no fare schedule modifications may be made prior to September 1, 2009. For purposes of this subsection, "modify" includes increases or decreases to the schedule. (~~(The commission may only approve ferry fare rate changes that have the same proportionate change for passengers as for vehicles.)~~)

(2) Pursuant to RCW 43.135.055, during the 2009-11 fiscal biennium, the transportation commission shall periodically review and, if necessary, modify a schedule of toll charges applicable to the state route number 167 high occupancy toll lane pilot project, as required under RCW 47.56.403. For purposes of this subsection, "modify" includes increases or decreases to the schedule.

(3) Pursuant to RCW 43.135.055, during the 2009-11 fiscal biennium, the transportation commission shall periodically review and, if necessary, modify the schedule of toll charges applicable to the Tacoma Narrows bridge, taking into consideration the recommendations of the citizen advisory committee created under RCW 47.46.091. For purposes of this subsection, "modify" includes increases or decreases to the schedule.

(4) The commission may name state ferry vessels consistent with its authority to name state transportation facilities under RCW 47.01.420. When naming or renaming state ferry vessels, the commission shall investigate selling the naming rights and shall make recommendations to the legislature regarding this option.

(5) \$350,000 of the motor vehicle account--state appropriation is provided solely for consultant support services to assist the



1 commission in updating the statewide transportation plan. The updated  
2 plan must be submitted to the legislature by December 1, 2010.

3 (6) If the commission considers implementing a ferry fuel  
4 surcharge, it must first submit an analysis and business plan to the  
5 office of financial management and either the joint transportation  
6 committee or the transportation committees of the legislature. The  
7 commission may impose a ferry fuel surcharge effective July 1, 2011.  
8 When implementing a ferry fuel surcharge, the commission must regard  
9 ferry fuel surcharges as fare policy changes and thus, ferry fuel  
10 surcharges should be included in all public procedures and processes  
11 currently used for fare pricing per RCW 47.60.290.

12 (7) The commission shall work with the department of  
13 transportation's economic partnerships (Program K) in conducting a best  
14 practices review of nontoll, public-private partnerships. The purpose  
15 of this review is to identify the policies and procedures that would be  
16 appropriate for application in Washington state. The commission must  
17 report its findings and recommendations, including draft legislation if  
18 warranted, to the house of representatives and senate transportation  
19 committees by January 2011.

20 (8) As part of its development of the statewide transportation  
21 plan, the commission shall review prioritized projects, including  
22 preservation and maintenance projects, from regional transportation and  
23 metropolitan planning organizations to identify statewide  
24 transportation needs. The review should include a brief description  
25 and status of each project along with the funding required and  
26 associated timeline from start to completion. The commission shall  
27 submit the review, along with recommendations, to the house of  
28 representatives and senate transportation committees by January 2011.

29 **Sec. 206.** 2009 c 470 s 206 (uncodified) is amended to read as  
30 follows:

31 **FOR THE FREIGHT MOBILITY STRATEGIC INVESTMENT BOARD**

32 Motor Vehicle Account--State Appropriation . . . . . ((\$695,000))  
33 \$688,000

34 The appropriation in this section is subject to the following  
35 conditions and limitations: The freight mobility strategic investment  
36 board shall, on a quarterly basis, provide status reports to the office